EXAMINING LEGISLATIVE PROPOSALS TO PRESERVE CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

HEARING

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

COMMITTEE ON FINANCIAL SERVICES

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EXAMINING LEGISLATIVE PROPOSALS TO PRESERVE CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

Thursday, June 11, 2015

U.S. HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS
AND CONSUMER CREDIT,
COMMITTEE ON FINANCIAL SERVICES,
Washington, D.C.

The subcommittee met, pursuant to notice, at 3:08 p.m., in room 2128, Rayburn House Office Building, Hon. Randy Neugebauer [chairman of the subcommittee] presiding.

Members present: Representatives Neugebauer, Pearce, Lucas, Fitzpatrick, Westmoreland, Luetkemeyer, Mulvaney, Pittenger, Barr, Rothfus, Guinta, Tipton, Williams, Love, Emmer; Clay, Scott, Maloney, Sherman, and Heck.

Also present: Representative Poliquin.

Chairman NEUGEBAUER. The Subcommittee on Financial Institutions and Consumer Credit will come to order. Without objection the Chair is authorized to declare a recess of the subcommittee at any time.

Today's hearing is entitled, "Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence." I would like to thank our witnesses for taking the time to testify today. This is the Subcommittee on Financial Institution's first time in the newly remodeled hearing room.

Before we begin, I ask unanimous consent that members of the full Financial Services Committee who do not sit on the subcommittee be recognized for questioning at the conclusion of the subcommittee members' questions. I also ask unanimous consent to recess this hearing at any time to be resumed at the call of the Chair.

I now recognize myself for 3 minutes.

Good afternoon. Today's hearing provides an opportunity for Members to continue the discussion of regulatory relief for community financial institutions and the protection of consumers' financial choices. Many Members here today have put in a tremendous amount of work to build bipartisan coalitions for their legislation. Today, we will consider legislation that covers a wide array of financial services and issues: legislation amending the bank examinations and supervision process; legislation addressing consumer lending concerns; and legislation facilitating a healthy child sup-

port system. I thank each of you and your staffs for advancing the ball and helping us move one step closer to our committee markup.

In my time today, I would like to focus on H.R. 1266, the Financial Product Safety Commission Act of 2015. This bill will restructure the Consumer Financial Protection Bureau (CFPB), turning its leadership into a five-person, bipartisan commission.

In this Congress, I have been honored to see this legislation become bipartisan with two members of this committee signing on as cosponsors, Ms. Sinema of Arizona, and Mr. Scott of Georgia. Many of you are continuing to constructively participate in ongoing negotiations. I have committed to each of you that we will work together to find an acceptable budget offset and an acceptable transition structure, and to consider this legislation separate from the CFPB appropriations discussion.

As we consider this new CFPB structure, I would like to remind Members who are still formulating a position on the long-time Democratic support of a five-person bipartisan commission at the CFPB that first, in 2008, Professor Elizabeth Warren, now Senator Warren, proposed creating a five-person bipartisan commission in her article, "Unsafe At Any Rate." In the wake of the financial crisis, President Obama publicized a regulatory reform White Paper that advocated for the commission at the CFPB.

In 2009, Barney Frank introduced the Consumer Financial Protection Agency Act, which created a five-person board at the CFPB. I am pleased to thank one of our witnesses, Mr. Brad Miller, for having been one of the original cosponsors and supporting the CFPB commission on two occasions. At the end of the day, to ensure a sustainable, effective, and balanced CFPB, we need to reform its structure, not get rid of it, but reform it. Ultimately, the consumers' experience in the financial marketplace will be significantly enhanced. I now recognize the gentleman from Missouri, Mr. Clay, for 2 minutes.

Mr. CLAY. Thank you very much, Mr. Chairman, and thank you to each of today's witnesses for your testimony. I want to especially welcome back our former colleague, Mr. Brad Miller of North Carolina. It is good to see you again. Today, we consider a number of legislative proposals that will purportedly work to preserve consumer choice and financial independence. Upon closer examination, however, very few of the bills under consideration actually preserve consumer choice or independence, or protect consumers or provide meaningful relief to community banks. There are two proposals, however, that I believe will preserve consumer choice and provide relief to our community financial institutions: H.R. 1553, which will provide meaningful relief for well-managed and well-capitalized community banks; and H.R. 1660, which would allow Federal savings and loans to charter flexibility to adjust to consumer demand.

I would urge my colleagues to spend more of the subcommittee's time considering H.R. 2642, the Community Lender Regulatory Relief and Consumer Protection Act of 2015, a bill that is supported by every Democratic member of this committee, and on the Senate Banking Committee, that would actually solve the problems that consumers and institutions face. And I look forward to hearing each of the witnesses' testimony. I yield back the remainder of my time.

Chairman NEUGEBAUER. I thank the gentleman, and now the gentleman from Kentucky, Mr. Barr, is recognized for one minute.

Mr. BARR. I thank the chairman for yielding. No one should be satisfied with our weak and unimpressive economic recovery. If this recovery had equaled the recovery of the 1980s, the economy today would be $2 trillion larger than it actually is. That works out to about $6,000 per family per year. The housing sector represents between a quarter and a third of the economy. Despite pent-up demand, the housing sector has recovered in fits and starts, and this unevenness is due in part to the lack of available credit, a problem being addressed by this subcommittee.

My legislation, H.R. 1210, the Portfolio Lending and Mortgage Access Act, would allow loans held on a bank or credit union's portfolio to satisfy the Dodd-Frank Act's qualified mortgage regulation. This simple adjustment will enable financial institutions to return to their traditional business of relationship mortgage lending in their communities, while preventing the murky securitizations and taxpayer backstops that led to the financial crisis. Today, I look forward to discussing solutions like H.R. 1210 to empower consumers and support economic growth. And, again, I thank the chairman for organizing this hearing and I yield back the balance of my time.

Chairman NEUGEBAUER. I thank the gentleman, and now we look forward to hearing from our panel today. I welcome Mr. Jess Sharp, managing director of the U.S. Chamber of Commerce Center for Capital Markets and Competitiveness; Ms. Hester Peirce, director of the Financial Markets Working Group, and senior research fellow at the Mercatus Center at George Mason University, thank you for being here; Mr. Oliver Ireland, a partner at Morrison & Foerster; and the Honorable Brad Miller, former colleague, and senior fellow at the Roosevelt Institute.

Mr. Sharp, you are now recognized for 5 minutes to summarize your testimony.

STATEMENT OF JESS SHARP, MANAGING DIRECTOR, CENTER FOR CAPITAL MARKETS COMPETITIVENESS, U.S. CHAMBER OF COMMERCE

Mr. SHARP. Thank you, sir. Chairman Neugebauer, Ranking Member Clay, and members of the subcommittee, my name is Jess Sharp, and I am the managing director of the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. Thank you again for inviting me to testify this afternoon on behalf of the hundreds of thousands of businesses the Chamber represents. Today, I will discuss one goal on which the subcommittee rightly continues to focus: ensuring that consumers have access to the products they want through safe and competitive marketplaces. The Chamber firmly supports consumer protection that deters and punishes financial fraud and predation and ensures that consumers receive clear, concise, and accurate disclosures; but consumers must be served as well as protected, and too often our regulatory agencies have failed to strike this careful balance.

Every day I hear from companies, big and small, banks and nonbanks, that struggle to understand these agencies directives or that offer a product that these agencies have targeted for elimination. So these experiences have emphasized five principles that

we advocate: first, companies and consumers benefit from clear rules of the road; second, rationing credit does not protect consumers; third, if everyone is in charge, then no one is in charge; and the fourth and the fifth are particular to the CFPB. The fourth is that the CFPB must respect the clear limits on its authority; and the fifth is that the CFPB must be transparent to consumers and to Congress. Now, these principles likewise obviously have informed Congress' oversight of the Bureau and its fellow banking regulators. Indeed, many of the proposals under consideration today would help address the problems businesses wrestle with every day in the consumer financial services marketplace. My testimony addresses most of the bills that are the subject of today's hearing, but in my statement, I am going to focus on four in particular.

The first is, Mr. Chairman, your H.R. 1266, the Financial Product Safety Commission Act of 2015, which would bring the CFPB in line with other independent agencies by codifying the commission structure that was originally proposed by this committee. The Chamber strongly supports this legislation and believes that by incorporating the controls and oversight that apply to other Federal regulatory agencies, Congress will ensure far greater stability over the long term for those who provide and rely upon credit.

In addition, the inclusion of a variety of viewpoints in a more structured decision-making process will better inform complex policymaking and cure some of the transparency and jurisdictional issues that have emerged in the Bureau's development.

The second is H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act, which would bring clear rules of the road to the indirect auto lending market. As this subcommittee well knows, the Bureau has created enormous uncertainty in the indirect auto lending market by issuing guidance without notice and comment and undertaking enforcement and supervisory actions based on post hoc statistical models. They failed to share its analysis or assumptions, thus depriving lenders of the ability to anticipate the Bureau's analysis. The Chamber strongly supports this legislation which would eliminate the Bureau's 2013 guidance, and impose reasonable conditions on any future guidance on this topic.

Next is H.R. 1941, the Financial Institutions Examination Fairness and Reform Act which would help eliminate ambiguities and delays in the exam process by requiring better communication between bank examiners, including the bureaus and financial institutions. It would also create an office of independent examination review within the Federal Financial Institutions Examination Council (FFIEC) that would hear appeals of material supervisory determinations contained in a final examination.

The Chamber strongly supports this legislation because it would address a number of well-documented problems with the supervision process, freeing up these institutions to provide the liquidity and capital that Main Street businesses need to grow.

H.R. 766, the Financial Institution Consumer Protection Act of 2015, would establish clear standards that the Federal banking agencies must abide by when using their leverage to effectively shut down lawful businesses by denying them banking services, a program called "Operation Chokepoint." Government agencies have

the tools to root out fraud and predation, and the Chamber supports their efforts to do so, but under Operation Chokepoint, government officials strongly discourage financial institutions from providing banking services to entire categories of lawful businesses based on reputational risk. This has left banks with little choice but to terminate longstanding relationships with customers because of explicit or implicit threats from their regulator. H.R. 766 would ensure that the government's power to terminate banking relationships would be used only where there is a material reason for doing so.

Again, the Chamber supports a number of other bills on the docket for this afternoon, but I wanted to call attention to these four in particular. Thank you again, and I am happy to answer any questions you may have.

[The prepared statement of Mr. Sharp can be found on page 58 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman, and now Ms. Peirce, you are recognized for 5 minutes.

STATEMENT OF HESTER PEIRCE, DIRECTOR, FINANCIAL MARKETS WORKING GROUP, AND SENIOR RESEARCH FELLOW, THE MERCATUS CENTER, THE GEORGE MASON UNIVERSITY

Ms. PEIRCE. Thank you, Chairman Neugebauer, Ranking Member Clay, and members of the subcommittee. It is a pleasure to be here today. I commend the subcommittee for undertaking to reform the financial regulatory system so that financial markets can work effectively, efficiently, and safely for the American public. I can't recommend that you take a particular position on any of these bills today, but I can point out some areas in which I think the bills could have a positive effect on the financial regulatory structure, specifically related to increasing regulatory accountability, making sure that decisions lie with people who have the interests, have the right incentives, and who have the right information to make those decisions, and, also, adjusting some rules where there have been changed circumstances or where there are unintended consequences of the existing rules.

Turning to the first of these potential benefits, increasing regulatory accountability, some of the bills before us today would enhance the requirements on regulators to be transparent about what they are planning to do and why they are planning to do it, and would then hold them accountable for the decisions that they make. Among these bills is the bill that would require the exam process to be revamped, and specifically the change that would require there to be an outside place for a financial institution that felt there was a mistake in an examination report. That financial institution could go to this outside entity for an objective third-party opinion, and I think that would be a valuable way to increase regulatory accountability.

Another bill related to the National Credit Union Association (NCUA) would provide some sunlight on the NCUA's budget. It is not the same as the congressional appropriations process, but at least it would allow the public to have some input in the priorities of the NCUA and how it is spending its money, and it would guard against fears of regulatory capture.

The bill that would change the CFPB into a commission would also increase regulatory accountability by making policy more consistent over time and also by ensuring that different views of how consumers could be protected would be brought into the debate. And similarly, the bill that would require the CFPB to do the indirect auto lending through a rule rather than through guidance would ensure not only that the public would have a chance to see what the Bureau was doing, but also to comment on it, and the Bureau would be required to conduct some cost benefit analysis as well. Efforts to increase regulatory accountability are designed to help regulators to be more effective and more consistent, to spend their money more wisely, and also to take into account more opinions about how objectives can be achieved.

A second way that today's bills could improve the financial regulatory structure is by shifting responsibility for decisions away from regulators who don't have access to the on-the-ground information and putting those decisions with the financial institutions that actually have the on-the-ground information and have an incentive to make a good decision, because they could lose money if they don't.

So, for example, the qualified mortgage bill, which would expand the definition of qualified mortgages to include mortgages that are held on portfolio, recognizes the fact that when a financial institution is going to hold a loan in portfolio, it has an incentive to do good underwriting.

Similarly, the Operation Chokepoint bills recognize that it is not regulators who can make a decision about what customers a bank should and should not deal with, but the bank itself, which has a real interest in maintaining its reputation, and can make those decisions itself.

Finally, today's bills could improve regulation by taking into account changed circumstances and unintended consequences of existing regulations. Both regulators and the regulated industry have raised some issues with implementation and administration of some of the current regulations. So, for example, the bill that would facilitate communication between the FBI and State regulators regarding criminal backgrounds could streamline that relationship.

Another bill that would allow there to be a grace period for new mortgage disclosure requirements is a reflection of the fact that much of the industry is not ready to comply, and this could result in dislocation for consumers as they try to get loans.

And finally, the bill that would extend the examination period to 18 months for banks of $1 billion or below, recognizes the regulatory burdens on small banks. Regulatory reforms like the ones that are before us today will not fix the financial crisis, but they are positive steps towards creating a financial structure that works better for the American economy and the American consumer. Thank you.

[The prepared statement of Ms. Peirce can be found on page 52 of the appendix.]

Chairman NEUGEBAUER. Thank you. Mr. Ireland, you are now recognized for 5 minutes.

STATEMENT OF OLIVER IRELAND, PARTNER, MORRISON & FOERSTER LLP

Mr. IRELAND. Thank you, Chairman Neugebauer and Ranking Member Clay. It is a pleasure to be here today. My name is Oliver Ireland. I am an attorney in the financial services practice at Morrison & Foerster. I have been an attorney in the financial services area for over 40 years: 26 years with the Federal Reserve, 15 years as an Associate General Counsel at the Board in Washington; and the last 15 years in private practice.

The subcommittee has a dozen proposals before it today. They are detailed. Like any legislative proposals, people can quarrel about details, but I think the thrust of all of these proposals, the basic purposes, are good purposes, and they ought to be pursued. I am going to try to say a couple of words about each one, because I don't want to leave anything out because they are all important to their sponsors, and they are all important to a constituency.

I spent a long time with the Federal Reserve Board, a collegial board, and collegial board decision-making, I think, has vast benefits over an individual director and individual secretary decision-making. You get stability. You get continuity. You get expertise. I think strongly that H.R. 1266 is a very good bill.

H.R. 1737 would deal with the issuance of guidance and suggests that auto lending guidance, indirect auto lending guidance be done through notice and comment. I think all guidance put out by the Bureau would benefit from notice and comment. I think that is a good proposal.

H.R. 1941, on changes to the examination process, I have been on both sides of that process. Examiners are expert at what they do, but they are not infallible. I think an alternate review process is in everybody's interests.

The safe harbors from the QM rule, both the short-term safe harbor for implementing the rule, and the safe harbor for held-on balance sheet mortgages, I think, are important. When you hold mortgages on balance sheet, two things happen: one, the institution realizes it is going to retain the risk of that mortgage and has a stronger incentive for underwriting; and two, it is more readily available for examiner scrutiny and examiner criticism if there is any problem with the underwriting standards.

The bills on Operation Chokepoint, if businesses are engaged in illegal activity, the appropriate solution is to go after the business and prosecute the business, not to cut off its banking services. Banking services are the lifeblood of businesses, and without building in the protections for that lifeblood, things like Operation Chokepoint, whether implemented by the Justice Department or bank regulators under the guise of reputational risk, I think are a disservice.

The increase in size for the 18-month exam cycle allows for more risk-based exams. It not only helps the institutions; I think it helps the agencies in the process.

The charter change without having to do a charter change but the powers change for thrifts through the OCC, I think is an option that makes a lot of sense. It is streamlines what would otherwise be a complex regulatory process.

H.R. 2287 on the NCUA budget, greater transparency in budgeting is a good public policy, and I think that should be pursued. H.R. 2091 is an amendment to the FCRA that deals with child support orders, again, a streamlining process to make the administration of child support by States more efficient. That makes a lot of sense.

Finally, the Williams bill, which would streamline background checks that are currently available for the Conference of State Bank Supervisors mortgage database for other State regulatory purposes, is also an efficiency in the regulatory process that ought to be pursued. Thank you for your attention. I would be happy to respond to any questions.

[The prepared statement of Mr. Ireland can be found on page 40 of the appendix.]

Chairman NEUGEBAUER. I thank the gentleman, and I recognize Mr. Miller for 5 minutes.

STATEMENT OF THE HONORABLE BRAD MILLER, FORMER MEMBER OF CONGRESS, AND SENIOR FELLOW, THE ROOSEVELT INSTITUTE

Mr. MILLER. Thank you, and good afternoon, Chairman Neugebauer, Ranking Member Clay, and members of the subcommittee. I am Brad Miller. I served for an eventful decade in the House of Representatives and as a member of the House Financial Services Committee. I am now a senior fellow at the Roosevelt Institute and Of Counsel to the firm of Grais & Ellsworth. The invitation to appear today asked me to assess 12 legislative proposals—I got the list on Tuesday—on a variety of topics, and to do that in 5 minutes. Like the other witnesses, I will not really attempt that. But there is an organizing principle. This pudding does have a theme. The bills are based on a narrative of the financial crisis that industry participants were victims, not perpetrators. Lending practices that might appear predatory to the unsophisticated, like me, were really an honest effort to meet consumer needs.

So, the industry should now be relieved of any annoying regulatory requirement that was based on an unjust accusation to the contrary. That narrative has been dutifully repeated in Washington and on Wall Street for years, but it is not credible with most Americans, because it is not true. The bills would unlearn the real lessons of the crisis. Here are some examples: There is an old joke that a man jumped off the Empire State Building, and as he passed the 60th floor, he said, "So far, so good." H.R. 1941 would codify "so far, so good" as the examination standard for commercial real estate loans held by federally-insured institutions, large and small alike. If a developer made payments on the loan, the examiner would treat the loan as performing and look no further. It would not matter if the loan was interest-only and had an impending balloon payment, if the collateral for the loan had collapsed in value and the loan was now deeply underwater, if the project for which the developer had borrowed was in deep trouble and the loan was very large, if that bank and other banks had many other such loans, or the developer's creditworthiness had declined and the developer could not now qualify for a rollover loan, the legislation would obviously make it very difficult for regulators to keep a prob-

lem from becoming a catastrophe, not just for a given institution, but for the financial system.

The bill also creates an appeal from any supervisory determination that provides far more process than is due. There is already an appeal process. An appeal would not just review the agency's decision for error or caprice, but would be a de novo review with no deference to the agency's fact-finding, expertise, or judgment. In other words, it would be a second bite of the apple. In extremis, too-big-to-fail banks would hire lawyers to block supervisory actions by appeal after appeal and cripple efforts to prevent or contain a crisis.

H.R. 1210 exempts depository institutions, again, large and small alike, from the ability-to-repay rules, for mortgages held in an institution's portfolio not sold to the securitization market, which is still comatose anyway. The argument is that the purpose of the requirement was to prevent foolish mortgages that create systemic risk, and lenders would not let credit standards slide again if they kept the mortgages. That argument is not supported by the experience of the financial crisis. Washington Mutual and Wachovia, among others, got in deep trouble because of portfolio mortgages.

More important, the purpose of the ability-to-repay rule is equally to protect consumers against predatory, equity-stripping mortgages. Asset-based predatory mortgages are no less predatory if held in portfolio, and homeowners can lose all of the equity in their home, which for most homeowners is the bulk of their life's savings, and still pose no risk to predatory lenders, even if held entirely in portfolio.

Finally, the failure of government agencies to investigate misconduct in the financial sector, including criminal fraud, and hold powerful institutions accountable economically has offended the sense of justice of millions of Americans, including me. Important government powers to investigate criminal conduct have gathered dust while Americans seethed. H.R. 766 provides a surprising solution to that problem. It strips the Department of Justice of much of the power to investigate and hold financial institutions accountable for misconduct in which they had a role. We have disagreed in talking amongst ourselves on the panel and in our conversations with staff on exactly what H.R. 766 does, but there is no question that it limits—the bill sponsor is here and perhaps can explain it—the important investigative and enforcement powers of the Financial Institutions Reform, Recovery, and Enforcement Act (FIRREA) for financial crimes in which institutions played a role.

The narrative of the financial crisis that I described earlier is very popular at political fundraisers in Washington, but go home this weekend and ask the people you represent, ask them if they think Wall Street was unjustly accused of wrongdoing in the financial crisis and since, and that law enforcement agencies and government regulators have bullied them. You probably will get a very different response than what you get at fundraisers. Thank you, Mr. Chairman.

[The prepared statement of Mr. Miller can be found on page 49 of the appendix.]

Chairman NEUGEBAUER. Thank you, gentlemen. I would remind the panelists that your full written testimony will be made a part of the record, and I thank you.

I now recognize myself for 5 minutes to begin questions. This is a simple question: Do you think replacing the single director with a five-person, bipartisan commission as leadership structure weakens consumer protection. Mr. Sharp?

Mr. SHARP. No. Absolutely not. Again, our view of the world is that the more viewpoints you have in the decision-making process, the more likely you are to arrive at a decision that balances the equities on both sides so consumers are protected, and they are still served. There are still products and services out there for them.

Chairman NEUGEBAUER. Thank you. Ms. Peirce, do you think it weakens consumer protection?

Ms. PEIRCE. No. I think it strengthens it by ensuring, as Mr. Sharp said, that there are multiple perspectives, but also ensuring continuity over time so you don't see massive swings in policy as the Administration changes.

Chairman NEUGEBAUER. Mr. Ireland, does it weaken consumer protection?

Mr. IRELAND. No. For the reasons already stated, it strengthens it.

Chairman NEUGEBAUER. Mr. Miller?

Mr. MILLER. Yes, it does weaken the agency. There are some downsides to it, as Ms. Peirce said, in the possible lack of continuity; but a single agency director is obviously a stronger and more agile agency. I have been interested in hearing the description of the original proposal in which I did play a very significant role, as I think Mr. Neugebauer said. And the idea that Elizabeth Warren and Bill Delahunt and Barney Frank and I sat around and thought, we really need a five-agency commission, no. We said we really needed an agency, not the seven agencies that have some consumer protection powers, but it is always secondary to safety and soundness.

Chairman NEUGEBAUER. But the question is, do you believe that a single director is the better solution? Initially, everybody thought that the five-person commission was. And so I want you to explain then how from the five to the one, how you felt like that strengthened consumer protection?

Mr. MILLER. It was, as you have noted, Elizabeth Warren's idea. What did she know about how Washington works? She was a professor at Harvard Law School. Bill Delahunt and I got involved. I was a relatively junior Member. I didn't know how Washington worked either, really. And, yes, Barney Frank was one of the original cosponsors of the bill that Bill Delahunt and I introduced. But he was the one who said if you want that agency to work, you need a single director for a variety of reasons. One is it is going to be involved in turf battles, particularly with the OCC, which has a single director. And they would be at a huge disadvantage. They are going to need to be quick on their feet to respond to new practices in industry, and a five-member commission will not be quick on its feet. And what he did not say—

Chairman NEUGEBAUER. I thank the gentlemen. My time is limited. And I think it is interesting that the President of the United States, the Chairman of the Financial Services Committee and a number of its members, and the original author of the concept of the CFPB all thought that a five-person commission was a better synopsis.

Mr. MILLER. I had more, by the way.

Chairman NEUGEBAUER. Some of my colleagues, and even Ranking Member Waters, who is not here, is, so if that is a good solution, so then I am thinking about in the next Administration, should it turn to be a Republican Administration, that you have the CFPB Director be Randy Neugebauer; and what would be the impact of the direction of that agency where you had another, basically a little bit different perspective on consumer protection and how we elect consistency because now you have this person who is trying to take the agency obviously in a much different direction. So I think the argument that I would make is that if you have a five-person commission, where there is a bipartisan commission, that the continuity is a little bit more appropriate.

Mr. Ireland, you spent 15 years as an Associate General Counsel at the Federal Reserve, where undoubtedly you saw firsthand how boards operate at a regulatory agency. Can you elaborate a little bit more? You mentioned it a little bit in your testimony, how you felt like that brought continuity at the Federal Reserve.

Mr. IRELAND. First of all, as you mentioned, agility is great as long as it is going in your direction. If it goes in the other direction, it goes in the other direction just as quickly. The seven-member board at the Federal Reserve brought expertise from every board member, and we were able to divide up the board into committees to address particular, different areas of the board's responsibility and take advantage of the seven board members and their expertise, and by their open debate in board meetings arrive at far better decisions than any one of them could arrive at by themselves.

Chairman NEUGEBAUER. I thank the gentleman. My time has expired. And now the gentleman from Missouri, Mr. Clay, is recognized for 5 minutes.

Mr. CLAY. Thank you, Mr. Chairman. You know, other regulators governed by bipartisan commissions often fall victim to dysfunction and infighting that undermines their ability to act decisively. Some examples are the SEC, the FEC, and a number of other agencies governed by bipartisan commissions are frequently subjected to periods of gridlock that prevent the agencies from acting.

Furthermore, the single directorate is common by banking regulators, such as the OCC and the FHFA, and the Bureau has been able to do its work to date effectively through a single director. Mr. Miller, we often hear from the Majority that if the Republicans were to win the White House, Democrats would prefer a bipartisan commission to a single director. How do you respond to this particular critique of the CFPB's governance structure?

Mr. MILLER. I have a long list of horrors if Republicans won the White House. This would be on it. I think that the lack of continuity is a problem. As I said earlier, I think that there is obviously a tradeoff. There are some advantages of a five-member commission. But a single, Mr. Clay—as she said correctly, some of the

five-member commissions don't work that well. And by the way, five-member commissions can turn over fairly quickly as well. There is not necessarily a huge amount of continuity with respect to five-member commissions. Not everybody serves out their full term.

Also, with the D.C. Circuit having interpreted "arbitrary and capricious" for their standard of review to mean, "would I have done exactly the same thing?" it becomes much harder for agencies to present a rule in a coherent, tight way, to survive judicial review because some members of this committee probably have no experience at all with compromise, but I have, as a Member of the House, and as a member of the State legislature in North Carolina, and it is sometimes kind of ugly. And sometimes the only explanation I had for certain sections of the bill was, yes, I thought that was stupid, but I needed votes, and that was the only way I could get them. That is not really what you want to take to the D.C. Circuit in trying to defend an agency rule on judicial review, but that is what you end up with when you have to put together three votes on a five-member commission.

Mr. CLAY. Let me shift to H.R. 1737, the reforming CFPB Indirect Auto Financing Guidance Act. Mr. Miller, according to the Center for Responsible Lending, African-Americans receive higher interest rates on car loans obtained from car dealers than similarly situated Caucasian borrowers, even after controlling for several credit measures, while those who receive loans directly from banks or credit unions do not.

In addition, African-Americans pay higher purchase prices for their cars, even after actively negotiating with the seller. In light of the longstanding and well-documented concerns about car-buying experience from minorities, do you think our time is better spent seeking to nullify guidance that clarifies the CFPB supervisory expectation for indirect auto lenders, or should our time be spent actually rooting out discriminatory practices?

Mr. MILLER. Yes. With respect to auto loans, just as with mortgages, I think it is the HMDA data which shows that it costs about 25 percent, or about a quarter of a basis point more for "borrowing while Black." It costs, according, according to CRL, 29 to 40 basis points more, which could be several hundred dollars over the course of a car loan for "borrowing while Black." It is perhaps not quite as expensive to "borrow while Brown," but Latinos are also discriminated against. What the CFPB did is—no. CFPB cannot regulate car lending by a dealer to a purchaser, but then they sell those to banks, and banks end up with discriminatory loans, and they have liability for that. And what CFPB did in their guidance is say failure gently—you know you are going to have a problem, and instead of using that kickback that you are paying dealers if they talk somebody into a higher interest rate than what they should have gotten, which ends up with a discriminatory lending portfolio, maybe you should consider paying them a flat fee instead.

Chairman NEUGEBAUER. The gentleman's time has expired.

Mr. MILLER. That is a fairly modest bit of advice.

Mr. CLAY. Thank you for your response.

Chairman NEUGEBAUER. I now recognize the gentleman from New Mexico, the vice chairman of the subcommittee, Mr. Pearce.

Mr. PEARCE. Thank you, Mr. Chairman. I appreciate all of the testimony. Mr. Miller, it is good to see you again in front of this committee.

Mr. Sharp, the CFPB announced last week regarding TILA-RESPA that they were going to be sensitive. Is that going to really impact the responses of the institutions as they move forward in this process?

Mr. SHARP. I can tell you based on conversations not just about this particular instance, but other instances of sort of take our word for it, we will tread lightly here and give you a reasonable grace period, that doesn't build a lot of confidence in the business community.

Mr. PEARCE. So the result of not having confidence—Mr. Ireland, do you have an opinion about businesses that don't have any confidence?

Mr. IRELAND. They are not going to make loans.

Mr. PEARCE. Yes. So, Mr. Miller, do you have any opinion on those two opinions?

Mr. MILLER. I think it is better business as confidence. I did not hear your question; I'm sorry. I have both my hearing aids—

Mr. PEARCE. I apologize. The question was the TILA-RESPA, and across the country, the companies have said, hey, we don't mind which way you are going, but you are just moving too fast. One small company, a very small company in my hometown—my hometown has 30,000 to 40,000 people—spent $100,000 for the software that they are going to need, and they are not sure that is going to cure the problem. So we have been pressing—Mr. Sherman and myself actually put in legislation saying that hold harmless until the end of the year at least. Give people some breathing room. And so my question was, and the CFPB came out this week as a good example of the agility you mentioned that they are going to have under the single director, they finally announced that they are going to be sensitive to the people. So my question is, is sensitive going to work?

Mr. MILLER. What Rich Cordray has said is that if a lender is acting in good faith, they are not going to bring enforcement measures. They are going to look at—

Mr. PEARCE. I think he said he is going to be sensitive. We asked him to roll off of the thing, and you just heard two people say it probably isn't going to work.

Mr. MILLER. I think it depends on the circumstances. What he said is if someone is acting in good faith and makes an innocent technical violation, they are not going to bring an enforcement action.

Mr. PEARCE. Trust us. Mr. Ireland, I think, hits the nail on the head. They are not going to make loans.

Mr. MILLER. It has also been 2 years. It seems like that is a long time to comply. You said they have been moving really quickly, but the—

Mr. PEARCE. I was interested in your comments. So many of the small banks in my district feel like they didn't cause the problems in 2008, but they feel like the bulk of the regulation has hit on them. Mr. Miller, my question is, do you see the community bankers as perpetrators? I find your comments to be leading in that di-

rection. You seem to be a student of the CFPB. Are the community banks perpetrators?

Mr. MILLER. No. Community banks were relatively innocent actors, but it has been the experience of the last decade or more, probably actually the experience of all of human history, that the worst actors will migrate to the least regulated portion of the market.

Mr. PEARCE. Just follow me on this if you would, that the community banks in my district make loans for—50 percent of the homes in my district are manufactured housing. And many banks won't give loans for them. They weren't listed because they have to have a balloon note, they are not listed as qualifying mortgages, so they hold them in portfolio. But your testimony seems to assume that portfolio loans indicate that it is out there holding people up. Your testimony has a bias against the portfolio loans. Nobody else, nobody from Washington, nobody from New York, is going to come out and lend money for mobile homes in my district.

The only way they can do it is hold in portfolio, and yet you decide that is predatory lending. You decide that somehow these people are perpetrators. All they are trying to do is figure out how to loan money to poor people who need a place to live. So I am not sure about the bias that your testimony presents toward the community bankers.

Mr. MILLER. I do have a little bit of time to respond to that. No. I think community bankers were better actors in the last decade than the nonbank lenders. The nonbank lenders were not regulated. They were not subject to consumer protection. One of the things the GAO has found is that actually that aspect of Dodd-Frank has helped community bankers because their nonbank competitors are now actually subject to regulation.

Mr. PEARCE. Personally, I don't find that, because they are saying, we are choked under the regulatory burden, and we are going to quit lending to poor people, basically is what is going to happen. Thank you, Mr. Chairman. I yield back.

Chairman NEUGEBAUER. The time of the gentleman has expired. The gentleman from Georgia, Mr. Scott, is recognized for 5 minutes.

Mr. SCOTT. Thank you, Mr. Chairman. I would like to continue that line of questioning because I think it is a real centerpiece of this hearing, dealing with credit unions and the small banks. There is actually no question, Mr. Miller, and I think you will agree—it is good to have you back with us, my friend—but look, credit unions and banks need more certainty that their good faith efforts do comply. While they are still meeting their consumer demand, that does not expose lenders to litigation during the initial period after the regulations become effective.

I think anybody looking at this would agree that it appears that this industry does need more time to implement this regulation, and I want a comment from the whole panel on this. Because these credit unions and small banks carry a tremendous load and a tremendous burden. They didn't cause the Wall Street breakdown. Now what you have that is so devastating is this rule and regulation is 1,888 pages. Why is there a problem not—and they are saying it is difficult to meet the August 1st deadline, and all they are

asking for is more time and a safe harbor through the end of the year. Now, what is wrong with that? Can anybody—I guess there is nothing wrong with it. Thank you.

Mr. MILLER. Is that me? Mr. Scott?

Mr. SCOTT. Yes, sir.

Mr. MILLER. As I said earlier, Rich Cordray has said—and I think he has generally acted pretty reasonably and has been consultative with the regulated community as well as with consumer groups—that they are going to take into account the circumstances and the nature of the conduct, and are not going to bring enforcement actions where there is good faith conduct, where there might be a technical violation. With respect to civil liability, there has really not been a whole lot of litigation under either RESPA or TILA. RESPA does not create a private right of action.

Mr. SCOTT. Can't we get some attention to the major concern that these stakeholders are not able to test the process that is used to develop these new disclosures and real-life transactions before this implementation date? They are saying this. I don't understand why there is this hesitation if the consumer protection agency is there to protect us. Don't you see where if we don't give this safe harbor, that it could cause human error? We are not talking about a rule or regulation of 10 pages. We are talking about 1,888 pages. I don't see why there is this objection to this bill to provide, what is it, 5 months maybe from August to December? I don't understand that, particularly if the industry itself is crying out and has legitimate concerns. So if the result is, and they say that this could bring about human errors, that ought to be enough of an alarm bell to say, okay, we don't want to harm the consumers. We want to protect the consumers.

Mr. MILLER. Mr. Scott, again, with respect to enforcement actions, I have said already what Richard Cordray, the Director of the CFPB has said. With respect to civil liability, you can't sue at all under RESPA. There is no private right of action. Under TILA, you have to show damages. To get damages, you have to show you were damaged. It is pretty hard to imagine a borrower showing significant damages for a technical, innocent violation of the rule. No lawyer is going to take that case. No court is going to award damages.

Mr. SCOTT. Then why would you object to the safe harbor? Why would you object—

Mr. MILLER. Because if a consumer has been damaged and the conduct was not in good faith, was not innocent, was not technical, then we should not strip consumers—

Mr. SCOTT. Mr. Miller, that is just speculation.

Chairman NEUGEBAUER. The Chair now recognizes the gentleman from Kentucky, Mr. Barr, for 5 minutes.

Mr. BARR. Thank you, Mr. Chairman. Ms. Peirce, I was particularly impressed with your testimony relating to the impact that the QM rule has had on availability of affordable mortgage credit, and, in particular, your remarks that a third of the National Association of REALTORS® survey respondents reported being unable to close mortgages due to requirements of the Qualified Mortgage Rule in the first quarter of 2015, and that, obviously, this has led to some mortgage originators and lenders exiting the mortgage business al-

together. What do you have to say about the combination of these restrictive QM rules with a GSE exemption that allows banks to originate non-QM loans and then sell them off into a taxpayer-supported Fannie Mae or Freddie Mac? What does that do to the financial system?

Ms. PEIRCE. I think it perpetuates the problems that we saw leading to the crisis, which was that the GSEs were too involved in our mortgage market, and rather than paring back their role, it is sort of perverse, but we have seen their role increase since the crisis, and we really need to address that.

Mr. BARR. So Ms. Peirce, Mr. Ireland, would you say that the QM rule, coupled with the GSE exemption, encourages risk being removed from shareholders of banks and on to the backs of taxpayers?

Ms. PEIRCE. I think that is exactly the opposite of what we want to do. We want to make sure that the banks who are making the loans are taking the care when they are making the loans because they know they are going to hold them. Or even if they are going to sell them to a private market participant, they know they have to prove that they are good loans.

Mr. BARR. Mr. Ireland, I was impressed with your testimony when you said that the portfolio lending and mortgage access legislation that I have introduced would not only encourage better, more sound underwriting, because the institution would retain the risk, but also the second point you made that it would allow for better exam scrutiny, regulator scrutiny of the banks or the credit unions mortgage loan portfolio. Can you elaborate on that?

Mr. IRELAND. Depending on the size of the bank, the examiners are going to come in on a yearly basis, or an 18-month basis, and look at the loan portfolio and look at the underwriting standards, and they are going to be able to see how those loans are performing. They are going to see how those loans are being paid back, and they are going to see whether or not the bank has good or predatory lending standards. That is not where our problem is, and it wasn't where our problem was in the financial crisis.

Mr. BARR. Let me jump into Mr. Miller's argument or concern that he has with my legislation. It is the same concern expressed by Director Cordray, and they cite Washington Mutual and Wachovia. My view is that if you are an institution, a regional institution, a large institution like Wachovia, and you are loading up with subprime mortgages, you are probably an institution that should fail, frankly. But my question to you, Mr. Ireland, is in light of the scrutiny that a lot of these institutions are under right now with the rigorous exams, what is the likelihood that Mr. Miller's parade of horribles would come to pass post-financial crisis? And what do you say about the criticism of an institution loading up on subprime mortgages?

Mr. IRELAND. First of all, there were a lot of mistakes that led up to the financial crisis, and some of them were regulatory. There were some oversights by some regulators, but, by and large, the problem was not due to held-in-portfolio mortgages. I think that the regulators today are making every effort not to make those mistakes again. And what we are seeing is rigorous examination processes, questions being asked wherever there are underwriting

issues or regulatory issues; and I think the likelihood that a regional institution builds a substantial portfolio badly underwritten residential mortgages is vastly smaller than it was in the past.

Mr. BARR. Mr. Miller, welcome back to the committee. Since we have addressed your particular concerns, I want to give you a chance here, but one of the things that you also were worried about was these equity-stripping mortgages. When you were in the committee—I will just have to quote you here—in a hearing in 2005 entitled, "Legislative Solutions to Abusive Mortgage Lending Practices," you actually advocated for access to the subprime market, and for individuals to borrow money against their home. Isn't that exactly the kind of equity-stripping product that you are now criticizing?

Mr. MILLER. Mr. Barr, I think you have an incomplete knowledge of my record on that issue. I introduced legislation in 2004 to regulate subprime mortgage lending, predatory mortgage lending. The argument by the industry and by their advocates, their allies in Congress, was that you are going to take away all of our ability to make loans to people who need credit. And I said there is a place for loans with different terms. But what was happening by then was that almost the entire market for subprime had displaced that legitimate differences based upon underwriting standards.

Chairman NEUGEBAUER. I'm sorry. The gentleman's time has expired. The Chair is going to be pretty strict on this because we are going to have votes soon. So if the Members have questions, make sure that within your 5 minutes, you leave time for the witnesses to answer those questions. I now recognize the gentlewoman from New York, Mrs. Maloney, for 5 minutes.

Mrs. MALONEY. Thank you. And I thank all the panelists, particularly my good friend and former colleague, Brad Miller. It is very good to see you again. I would like to ask Congressman Miller about the NCUA Budget Transparency Act, which would require the NCUA to publish its draft budget in the Federal Register and hold a public hearing on its budget. It is my understanding that no other banking regulator is required to hold these hearings, so it is a little unclear to me why NCUA should be singled out for this particular requirement.

I also understand that NCUA voluntarily held hearings on its budget prior to the financial crisis, and that the industry stakeholders consistently lobbied them during these hearings to cut their budget. And as a result of these budget cuts, the NCUA itself admits that it wasn't fully prepared when the crisis hit. So according to a letter from NCUA, these budget cuts meant that it was "insufficiently resourced" to address the financial crisis. I would like unanimous consent to place this letter into the record, Mr. Chairman.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mrs. MALONEY. So I guess my question is, knowing what we know now, do you think it is wise to make these public hearings on NCUA's budget mandatory?

Mr. MILLER. Mrs. Maloney, I hate to say this, but of the 12 bills, that is not one to which I have given a great deal of attention. I do know that, as you said, the other financial regulators, for the most part, certainly the safety and soundness regulators, have an

independent funding source that comes from the regulated, and they have all provided justifications that are fairly vague, given how much money is involved to Congress as part of their statute, but they have not had hearings, and there has been some limit to the extent to which Congress can intrude, which has made those industries, for the most part, stronger. Because those regulatory agencies that depend upon annual appropriations like the FTC, like the CFTC, like the old OFHEO, which preceded the FHFA, that needed annual appropriations, those regulated by that agency could come in and lobby Congress to cut back on their ability to investigate conduct in the industry. That was particularly true of OFHEO. OFHEO was probably the most captured regulatory agency in all of U.S. history. They were supposed to regulate Fannie Mae and Freddie Mac, and Fannie and Freddie were both very powerful in Washington and were able to keep OFHEO about as captured as an agency could possibly be.

So I am inclined to agree with you, but I have to admit this is not something to which I have given a great deal of thought.

Mrs. MALONEY. What about the requirement that they are the only banking regulator that is required to hold these hearings? Why should they be singled out?

Mr. MILLER. Like I said, I am inclined to agree with you. Since the OCC does not, since the FDIC does not—I hate to say the CFPB, in this room—but since the OCC does not, I am inclined to think the NCUA should not either.

Mrs. MALONEY. Then I would also like to ask you about H.R. 2213, which would create a statutory safe harbor from the enforcement of CFPB's new integrated disclosure form through the end of 2015. And I led a bipartisan letter with Mr. Barr from Kentucky—I don't think he is here right now; I don't see him—asking for a grace period on the integrated disclosure requirement through the end of the year for lenders who make good faith efforts to comply, and this is what the CFPB did for the QM rule as well; and 254 Members, including many Members on this committee, signed on to our letter, and last week, the CFPB responded to our letter and did promise to observe the same kind of grace period that they did for the QM rule, and I would like unanimous consent to place in the record the response to Andy Barr and myself from the CFPB.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mrs. MALONEY. Now, the CFPB's letter was a little unclear on how long this grace period would last, and I hope that they will offer some further clarity. But given that the CFPB has already indicated a willingness to offer the industry some sort of grace period when the new integrated disclosure forms take effect on August 1st, do you think it is necessary to pass legislation codifying a safe harbor?

Uh-oh. My time is up.

Chairman NEUGEBAUER. I'm sorry. The gentlewoman's time has expired.

Mrs. MALONEY. Maybe you can get back to us in writing. In any event, it is great to see you again.

Chairman NEUGEBAUER. The gentleman, my neighbor to the north in Oklahoma, Mr. Lucas, is recognized for 5 minutes.

Mr. LUCAS. Thank you, Mr. Chairman. And I truly do appreciate you holding this hearing on important regulatory relief measures before the committee. Like many at this dais, I represent an area that relies heavily on community financial institutions that are basically the lifeblood of our economic success in the State and in the district. And I have been very focused on how we provide relief from the unfair and unnecessary regulatory burdens plaguing those small financial institutions, and I believe that this set of bills will work to help accomplish that, and I am very congratulatory to all of the authors.

With that, Ms. Peirce, let's discuss for a moment, in your testimony you note that, I believe in regards to H.R. 1941, "Regardless of their frequency, examinations are not worthwhile unless they are timely, thorough, rooted in carefully employed judgment rather than inflexible checklists, and consistent across institutions."

Could you discuss some of the problems with the current state of the financial institution examination environment, specifically regarding consistency in the quality of the exams and the examiners?

Ms. PEIRCE. Yes. A concern I have is that because there are so few appeals that are ever taken on exam findings, and because usually the exam findings are upheld and they are done intra-agency, I don't think there is the consistency across financial regulators. And I think the financial institutions are in a pretty difficult position if they want to challenge a finding, because they know that they have this ongoing relationship with their examiner, and so we are not getting the sunlight on the process and we are not getting the opportunity to really see and test whether these exam findings are accurate.

And, again, I think most of the examiners are well-intentioned, they are trying to do a good job, but sometimes you do a better job when your work is checked from the outside.

Mr. LUCAS. Years ago, I can think of one of my loan officers, and, yes, I come from a long line of debtors, who observed that examiners tend to follow the rule of focusing on whatever the past was, not what the future challenges might be, and that makes it rather difficult to be flexible enough to address these kind of matters.

The focus of these bills is to provide relief to allow our community bankers to do their work. And many of us, like myself, believe that there is sufficient flexibility in the various statutes if the regulators would implement it.

As we work to try and make sure that relief is available where it should be targeted, could you touch for a moment on one of the issues that I have been trying in my own mind to work through? Let's talk about how you would define a community bank—size, activity, a combination of either? Let's visit for a moment in a hypothetical sense.

Ms. PEIRCE. The Mercatus Center did a survey, and we struggled with the issue of how to define a community bank, and we ultimately used a $10 billion cutoff. A more accurate way to define a community bank is to look at the activities, but trying to do a survey measuring what the activities are was too difficult. So I think you have to look to see is it a community lending institution, is it

taking deposits and making loans in the local community, and that is what I would ultimately define as a community bank.

Mr. LUCAS. And based on our recent history of the challenges from 2008 forward, those institutions making loans in their community, in businesses of their experience and expertise, typically were not the real threat to the national economy. Is that a fair assessment, Ms. Peirce?

Ms. PEIRCE. That is a fair assessment, as long as regulators don't force them to do the kinds of loans that they are not used to doing. So we have to be very careful that the regulatory structure doesn't force these lenders into new areas with which they are not familiar.

Mr. LUCAS. A couple of months ago, I asked a young compliance officer at a community bank what the biggest challenge she faced was, and her response was being judged in the future by actions in the past based on standards that do not exist yet. I thought that was very telling. It is a legitimate point, wouldn't you say, Ms. Peirce?

Ms. PEIRCE. It is. And I worry that bankers are getting out of the business because of that very reason.

Mr. LUCAS. Mr. Chairman, we have an obligation to try and make sure that process does not continue, otherwise the economic difficulties that it will bring to your communities and mine will do damage for a generation.

With that, I yield back, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

And now the gentleman from Washington, Mr. Heck, is recognized for 5 minutes.

Mr. HECK. Thank you, Mr. Chairman. I want to add my voice of gratitude for your holding this hearing today. I think it is important. In fact, I think it is important that we never stop asking ourselves the question of, have we struck the right balance with regulation and consumer protection and matters of safety and soundness?

I am not one who believes that we should never touch a hair on the head of Dodd-Frank by any means. Indeed, I am pretty concerned that there are trends, especially among community banks, where we are losing some relationship-based banking and where, frankly, they are being channeled into certain lines of business that narrow them such that there is—death spiral would be too strong a term—but render them less able to serve as many people as they might like.

Having said all that, I find one aspect of today's hearing troubling, and it is, frankly, I think we are thinking too small bore here. We keep taking little, tiny shots at this thing, and, frankly, I am just wanting to register maybe it is time we took a big step back, maybe it is time we looked at something like Mr. Hoenig's approach or, frankly, a brand new charter for certain institutions.

I think a blue sky exercise is exactly what I would have taken my company through, especially if we wrapped our chain around our axle as often as we have with these tiny rifle shots, which, frankly, don't end up becoming law.

So I just wanted to register that as a suggestion. Maybe it is time to think bigger than we are.

Congressman Miller, I am honored that you are here today, sir. Thank you. I understand your concerns about the FIRREA section of H.R. 766 and, frankly, I share many of them. But—there's always a but—I think Congressman Luetkemeyer deserves a lot of credit for the first section of the bill, which requires examiners and banks to look at individual companies, not just the industry they are from, in addressing any concern or risk of a given account.

And I want to relate this to my own State and that of Colorado and Oregon, who, as everyone knows, have recently enacted adult recreational use of marijuana. And I am very glad to see the FDIC has moved to implement that kind of a business-based approach. Would you, sir, notwithstanding your concerns about FIRREA, at least acknowledge that a business-by-business approach is probably more commonsensical?

Mr. MILLER. Of course I think that no Federal regulator should single out any business or any industry because they don't approve, they don't like that business or industry. Now, I know that has been the debate about Choke Point. Choke Point, the critics say, you are singling out businesses you don't like or industries you don't like, and the Department of Justice says, we are not, the FDIC says, we are not, and the critics say, yes, you are, and then they say, no, we are not, yes we are, no, we are not. I don't really want to be involved in that debate. I don't think I have anything to add to that debate.

Mr. HECK. Then give me my last 1 minute and 37 seconds, please.

Mr. MILLER. All right.

Mr. HECK. But I do thank you.

Mr. Sharp?

Mr. SHARP. Yes, sir.

Mr. HECK. I don't have enough time left to ask the two questions I want, but I do want everybody in this room to know that this gentleman comes from a very distinguished lineage. I ran into Jess at the spectacular celebration down at the Smithsonian of fighter aces. I was very privileged to be the wingman to Congressman Johnson in passing the Congressional Gold Medal for fighter aces. We haven't created a fighter ace in about 40-some years in this country. There are approximately 100 of them left. Mr. Sharp's grandfather flew—P-51s, Jess?

Mr. SHARP. P-51s, yes, sir.

Mr. HECK. Over Europe. And, again, there just aren't very many of those heroes left. And he and his grandfather were there. And we honor your family's service.

You have a lot to live up to.

Mr. SHARP. Yes, I do.

Mr. HECK. Okay. I have a few seconds.

I have been working with Mr. Posey on a bill to set up a no-action letter, and with your office as well, and very constructively, and I thank you for that. I guess, in 23 seconds, what do you see as the most salient benefits of a working no-action letter process? That bill is not before us today, but I still hope we can find the right partisan balance and philosophical balance to be able to move us in this direction. Even Mr. Cordray acknowledged that what they came forth with was too narrow.

You started tapping, Mr. Chairman, before it reached zero. I yield back the balance of my time.

Chairman NEUGEBAUER. I thank the gentleman. And I have a big idea. Let's make the CFPB bigger and make a five-person commission.

I now go to the gentleman from North Carolina, Mr. Pittenger, for 5 minutes.

Mr. PITTENGER. Thank you, Mr. Chairman.

I have served on a bank board for a dozen years, for a community bank in Charlotte, and I have really been taken aback today by the statements that I have heard, really the enthusiastic, zealous support for the CFPB and Dodd-Frank. I have visited countless numbers of our community banks in my district. I spoke 2 weeks ago at the annual convention of the North Carolina bankers. And time and again, I hear the same stories of the compliance requirements, of the restrictions, that they are not hiring the loan officers, they are having to hire compliance officers, that they are restricted in who they can loan money to. Character is no longer a box to check. It doesn't matter how well you know that person, you have to check all the right boxes.

I think what is lost in context, to me, is where we are in our economy, we are at 2.2 percent economic growth; where we are in access to capital in the market. Most major developers are having to go to private equity, because capital is not available in the commercial banking, and it is much more costly and much more costly to consumers.

So what is done, with good intentions, I think has been very misguided, particularly as it relates to community banks, who have provided nearly half of the small business loans in this country. And to me, it is that entrepreneur that is the lifeblood of our economy, that is the building block, and that beginning entrepreneur can't get access to capital because his character doesn't mean a hoot to that banker he has known for 25 years.

So I am really amazed that there is not a consideration for reality, that there is maybe no context of conversations with reality.

And I would like to see a reaction maybe from Mr. Ireland, and maybe you, Mr. Miller, if you want to say something else. As I hear my friends out there struggling, there are no new banks, community banks being chartered, and they are consolidating today.

Mr. IRELAND. Increased regulatory burden favors larger banks who can spread the cost of the new regulatory requirements over a larger base. There are some exceptions, capital rules work a little bit differently, but most regulatory requirements work that way.

I don't know how a small bank can comply with the new mortgage rules. Look at those 1,800 pages. You want the small banker to be out evaluating credit for loans in their community rather than reading an 1,800-page rule. That is what you want them to do. And as we react, and in some cases overreact, with regulatory requirements, it makes it harder to be a small bank, it makes the break-even point, the size of a bank go up, and I think you have a real problem, the bankers start to lose touch with their communities. And the character loans that you referred to, which would have started, historically, many of the great businesses in the United States, don't get made anymore.

Mr. PITTENGER. Including my own.

Mr. Miller, have you had any occasion to talk to any bank presidents, small bank presidents, the community banks, midsized banks, in the last year or two?

Mr. MILLER. Last year or two—my brother spent his career in banking, and a large part of that is at a community bank. My father went to NC State, my brother was a banker. I have now aired all my family's dirty linens.

Mr. PITTENGER. No, let's be really specific. I don't have much time. How many banks have you visited in the last year?

Mr. MILLER. As a customer would be the only reason I would visit.

Mr. PITTENGER. Okay. So you really haven't had any—

Mr. MILLER. When I was a member of this committee, I frequently visited banks and credit unions.

Mr. PITTENGER. I know. A law was passed. Don't you think it makes sense to go back and say, now, I wonder what the impacts have been of that law?

Mr. MILLER. Sure.

Mr. PITTENGER. Let me encourage you to do that.

Mr. MILLER. I think it makes perfect sense to see what is working, and what is not.

Mr. PITTENGER. Mr. Sharp, what has been your observation in terms of the credit markets, availability of capital in the business community?

Mr. SHARP. It absolutely is constricted. And you touched on a point that, if you don't mind, I want to expand on for just a quick second.

Mr. PITTENGER. Quickly. Ten seconds.

Mr. SHARP. And that is that a lot of small businesses in the marketplace act as consumers. They use their credit cards, they borrow against their home. And to the extent we are limiting access to credit for consumers, there is also a knock-on effect for small businesses. That is very important.

Mr. PITTENGER. Thank you. I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

We have a vote started, but there is not a big rush to the Floor right now; 23 people have voted. We are going to try to get a couple more in, and we are going to go to the gentleman from California, Mr. Sherman, for 5 minutes.

Mr. SHERMAN. Mr. Miller, welcome back. Meetings of the Brad caucus have not been interesting since your departure.

We are going to focus on two bills. Mr. Pearce and I have the bill to provide a temporary safe harbor from the integrated disclosure requirements, and of course there is the NCUA Budget Transparency Act that I would like to focus on first. A simple bill, it says the budget will be transparent, people have a right to comment on it. Can anybody think of a reason that is a bad idea?

Mr. SHARP. Not here.

Mr. SHERMAN. What?

Mr. SHARP. I said, not here.

Mr. SHERMAN. Not here.

Any response?

Mr. IRELAND. I operated in the Federal Reserve for years, and my rule of thumb was I never wanted to be a part of anything that I wasn't prepared to discuss before this committee on C-SPAN. So I don't see why discussing it in a hearing to the public should be a problem.

Mr. SHERMAN. Gotcha.

Let's move on to the bill on the TRID form. A cruise ship is a very complicated piece of machinery, and if I buy a cruise ship I want it delivered on time, I want it to depart on time, I don't want any delays, but I expect the first use of the cruise ship to be a shakedown cruise, because a cruise ship is complicated and one expects that there will be some difficulties. That is why I would not invite 3,000 trial lawyers to come onto my ship on its shakedown cruise and invite them to bring lawsuits should there be any failure to meet the standards of luxury that we would aspire to.

It occurs to me that a 1,888-page regulation might be as complicated as a cruise ship and that perhaps we ought to take it on a shakedown cruise, not delay it, but say that if people comply in good faith, do their best job to comply, that they shouldn't face the lawsuits or the harsh regulatory action.

There has been a letter issued that has a sentence that doesn't help me sleep at night. We have a bill that would, but I am concerned on the lawsuit side.

Mr. Sharp, can you imagine a mortgage lender or escrow or title company screwing up and getting a lawsuit because things didn't go smoothly in August and September?

Mr. SHARP. Yes, absolutely, I can certainly imagine that. And, Congressman, I feel like a 5-month accommodation is a pretty reasonable thing to ask for given the complexity that you have just described.

Mr. SHERMAN. It is only 1,888 pages.

And I will ask any witness here, are there folks in the industry who are backing away from opening files or opening as many files as they might otherwise do so in August and September because they are concerned about whether they will be in full compliance with these rules? Ms. Peirce?

Ms. PEIRCE. I have read that is what people are predicting will happen, that there will be a period where it will be harder for consumers to get loans.

Mr. SHERMAN. What I have heard is that the biggest organizations might still be in the market, but some of the smaller organizations will back away. That is not good for consumers.

Can anybody think of a disadvantage to a 5-month period in which those who try to comply in good faith are held harmless for mistakes?

Mr. Miller, I know you had—

Mr. MILLER. Not as you phrased it.

Mr. SHERMAN. Good. So we have two bills, I like the two bills, and all four witnesses like the two bills. The motion carries. And I yield back.

Mr. MILLER. As you phrased it. If there is a good faith effort by a lending institution to comply with the new regs, which have been a long time in the works. Elizabeth Warren testified before this committee I think probably in 2011, maybe even the fall of 2010

when she was a newly acting director, and that was the first thing she was working on, was trying to develop a unified RESPA-TILA compliance.

Chairman NEUGEBAUER. I thank the gentleman.

Mr. SHERMAN. If I can just comment. Just because Elizabeth Warren is here testifying about a proposal doesn't mean a small or medium-sized bank was working on figuring out how to comply with the as-of-yet-not-written bill in 2011. They are just starting to focus now.

I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

The gentleman from New Hampshire, Mr. Guinta, is recognized for 5 minutes. After Mr. Guinta's testimony, we will recess.

Mr. GUINTA. Thank you, Mr. Chairman.

Mr. Chairman, I ask for unanimous consent to submit testimony from the National Auto Dealers Association and letters of support into the record.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. GUINTA. Thank you, Mr. Chairman.

It has been over 2 years now since the CFPB issued their flawed auto lending guidance, a guidance that was issued without allowing a public comment period, which I find a bit unusual. And despite 12 bipartisan letters sent to the CFPB by Congress, they have yet to address what I would consider the faulty and unclear guidance issued back in March of 2013.

However, I also find it a bit interesting and coincidental to see that the CFPB finalized their rule to oversee nonbank auto finance companies just yesterday, on the eve of today's hearing.

What we see here is the CFPB's attempt to go outside the formal rulemaking process and change the market without doing their research. On November 4, 2013, Director Cordray sent a letter in response to Senator Shaheen from my State of New Hampshire and Senator Portman that admitted they did not take into account the impact their guidance would have on consumers.

Ironically, they are the agency that is supposed to protect consumers, but the guidance would in fact, in my view, harm them, and it doesn't stop with consumers. The guidance impacts not just auto dealers, RV dealers, motorcycle dealers, international dealers, and even our manufacturers.

My good friend and I, Mr. Perlmutter and I, have introduced H.R. 1737, a bill that is so simple and so narrow, that provides just clarity, fairness, and due process. The bill simply asks the CFPB to rescind their flawed guidance and reissue it under a more transparent process by consulting other regulators and allowing public comment.

So I have a couple of very quick questions. Mr. Sharp, I would like to first address my question to you. Do you think it would be beneficial and helpful to allow the public to comment on guidance that would impact a longstanding auto loan practice that has been proven to benefit consumers?

Mr. SHARP. Yes, absolutely. We strongly support the legislation and think that this is an area where the CFPB just got it wrong and it needs to start over. And a big part of getting it right is un-

derstanding the market, and they are not going to get that without asking the public and stakeholders what the effects would be.

Mr. GUINTA. Thank you. I appreciate it.

Mr. Ireland, can you tell me what your thoughts are on why H.R. 1737 is necessary?

Mr. IRELAND. I think it is necessary because the Bureau does not take advantage of the opportunity for public comment. Regardless of whether or not it is required, it is a fantastic research tool and it lets you find out what the issues are and what the problems are with what you are proposing. When I was at the Federal Reserve, I looked at public comment as an opportunity. I think the Bureau should view it the same way. And if they are not going to do that, maybe they have to be led there. And that is what this bill does, and I think that is appropriate.

Mr. GUINTA. Thank you very much.

Ms. Peirce, do you agree that the public should have the ability to comment on the CFPB guidance?

Ms. PEIRCE. Yes. I think generally, and Mr. Ireland alluded to this before, doing material guidance of any kind is always enhanced if you have a public process. And also, if they did it by rulemaking, they would have to consider the costs, and that is really important. Obviously, as you mentioned, it is important for them to consider what the effect on consumers would be.

Mr. GUINTA. Mr. Miller, would you concur?

Mr. MILLER. No, not so much.

Mr. GUINTA. You don't think that the public should have the—

Mr. MILLER. I think it should be consultative. I do not think it should necessarily require the full notice of comment of the Administrative Procedures Act, which is almost as tortured as trying to pass a bill through Congress. It is not all unusual for agencies to proceed on a case-by-case basis, recognizing they can't anticipate every circumstance. And it is usually the regulated industry that asks for guidance, kind of tell us how you are thinking about this.

And the guidance that CFPB issued seems to make a lot of sense to me. You are now buying loans, and you have a portfolio in which White borrowers in the same circumstances, with the same credit score, with the same loan-to-value, have significantly lower interest rates, and you have liability for that. And if you want to avoid liability, you might want to think about the way you are going about buying those loans.

Mr. GUINTA. Reclaiming my time, I think that I would respectfully disagree. I think the public should have the ability to issue public comment, considering they are now being viewed by the CFPB in a very, very different way.

Chairman NEUGEBAUER. The time of the gentleman has expired.

I am now going to squeeze in Mr. Williams from Texas. You are recognized for 5 minutes.

Mr. WILLIAMS. Thank you, Mr. Chairman.

Before I begin discussion of my bill, the State Licensing Efficiency Act of 2015, I would be remiss if I didn't comment on Mr. Guinta's indirect auto financing bill. As all of my colleagues know, this is an issue that is very personal to me. As a small business owner, and, Mr. Miller, a car dealer for 44 years, I have never seen such an overreach by a Federal agency as we are seeing today with

the CFPB and indirect auto lenders. After issuing guidance in 2013 with zero input from Congress and zero input from the industry, nothing the Bureau does surprises me anymore.

As an original cosponsor of Mr. Guinta's bill, I strongly support his effort, and I hope this committee and this Congress send a strong message to Director Cordray that his actions have not gone unnoticed and that the consumer knows better than the Federal Government what a good deal is and what a bad deal is.

With that being said, the State Licensing Efficiency Act, H.R. 2643, that I am sponsoring will expand the State's liability to use a federally accepted registry, the National Multi-State Licensing System, to expedite the existing background check process. I would like to ask unanimous consent to submit a support letter for the record from the Conference of State Bank Supervisors and their president and CEO, John Ryan.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. WILLIAMS. The current NMLS has been used to oversee the mortgage industry since 2008, but the FBI has prevented State regulators, citing an absence in Federal law, from expanding to use its conduct background checks for other financial services, such as companies like MoneyGram, who support this legislation.

My first question is for Mr. Ireland. You said in your testimony that using the NMLS for nonmortgage financial services could cut as much as 3 weeks out of the process for licensing these financial providers. The turnaround time for the background checks for other financial services providers, in fact, can take weeks, if not months.

Please help me and this committee understand how and why there is such a wide discrepancy in processing background checks for mortgage loan originators and other financial services providers. Can you expand on how a quicker process would potentially improve consumer choice?

Mr. IRELAND. The mortgage loan process that is currently in place is fully automated. You can scan fingerprints, you can query the database, and you can get a response on the background check in, I understand, 2 hours.

If you don't have access to that system, you are in a manual system. I am told by the Conference of State Bank Supervisors' representatives that it is about a 3-week process at a minimum, and it obviously can take longer than that, to go through that manual system. And that just seems to me to be needless bureaucracy. If you have a more efficient system, you ought to let the States use it, and you ought to let them use it for all their legitimate licensing purposes.

Mr. WILLIAMS. I appreciate that, and I appreciate you all coming today.

And I yield back my time, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

The committee will now stand in recess, but resume after votes. I encourage Members to return as quickly as possible. This vote is—actually, it is about over. So I would ask our witnesses to be patient. We will be right back.

[recess]

Chairman NEUGEBAUER. The committee will come to order. Thanks again for your patience to our panel.

I now recognize the gentleman from Missouri, Mr. Luetkemeyer, the chairman of our Housing and Insurance Subcommittee, for 5 minutes.

Mr. LUETKEMEYER. Thank you, Mr. Chairman.

And thank all of you for waiting.

Let's start out with Mr. Ireland. You have been with the Federal Reserve in the past for quite some time, have been involved with bank examinations. Have you ever seen anything like Operation Choke Point before in all the years of your being around the banking industry, sir?

Mr. IRELAND. No, I never saw anything like that before, and if I had, I would have tried to stop it.

Mr. LUETKEMEYER. It is interesting. We had William Isaac, the former FDIC Chair here, he testified some time ago, about a year ago, as a matter of fact, and his comment was that he had never seen anything like this in his 45 years being in the banking business as a consultant or even as Chairman of the FDIC.

One of the things that Mr. Miller brought up in his testimony a while ago was with regards to FIRREA. It seems as though in the testimony of my colleagues, they like all the bill except that part of it. And so my thought process is, and what I have heard from the banking industry, is that FIRREA originally was law to be able to allow banks to protect themselves against fraud, but what has happened is DOJ has flipped that and now it has expanded and reinterpreted the law to be able to use it against them for fraud. What I try do in my bill is narrow it back down to the original intention.

So, Mr. Ireland, what do you think about that part of the bill?

Mr. IRELAND. I didn't have any problem with that. It seemed to me you made the language of what it covered a little clearer and you elevated the subpoena power in the Justice Department to more senior officials, but still allowed it to be exercised within the Justice Department.

I lived through FIRREA, and we were trying to get the people who had been cheating thrifts with that provision, and I think what you have done is consistent with the original intent.

Mr. LUETKEMEYER. I think that is what we are tying to do, is continue to allow those agencies to do their job, but at the same time stop the nonsense, because, as our good friends on the Oversight and Government Reform Committee have found, in getting access to the emails and internal memos and offering a report on both agencies, DOJ and FDIC, in their own words, say that the collusion is going on and their intent is beyond that of money laundering. Their intent is to "drive them out, drive the industry out of business," as well as these industries don't have the moral right to exist. I have told the FDIC Chairman, "You are not in the business of being the moral police; you are supposed to be an enforcer of the existing laws."

Mr. Sharp, as a representative from the U.S. Chamber of Commerce, I know in January the FDIC put in some new protocols with regards to how they were using their enforcement ability with regards to banks, and said that they would stop doing Operation Choke Point activities. Have you seen that yet?

Mr. SHARP. Thank you, Congressman. I would say that my phone hasn't stopped ringing about concerns about Operation Choke Point. So to whatever degree the FDIC or other government agencies have tried to give people comfort that there is nothing to see here, it is not giving companies the kind of comfort that we would all like them to have.

Mr. LUETKEMEYER. It is interesting, because the FDIC agreed that the protocols that I have in the bill, H.R. 766, were what they put in place and actually did a little bit more, to their credit. And so I am excited that they are willing to work with us, but I have yet to see the fruitions of those changes.

And like you, I have an email address that they can email me, the industry, individuals who are being hurt by Operation Choke Point, can actually email us and tell their stories. And so we still get some stories. And, unfortunately, that is why we have to have the bill, to be able to stop this.

And so it is interesting from the standpoint that these agencies, which are supposed to be enforcing the law, are making it up as they go and they are taking out their own ideas and ideology and moral value system on our citizens.

Ms. Peirce, I know that you probably have some experience with this as well. I know you testified in support of the bill. Can you tell me a little bit about what your opinion of that is and what your experience has been?

Ms. PEIRCE. Yes. And I should clarify that I can't either support or recommend against supporting a bill, but I will say that Operation Choke Point and similar programs to try to have regulators either indirectly or directly tell banks the businesses they can deal with are really damaging and really impair the ability of a bank to serve its clientele. And I think that is really harmful to—essentially the government is controlling access to capital.

Mr. LUETKEMEYER. As a former regulator myself in one of my past careers, it is certainly disheartening to see this happen, from the standpoint that this is not the way we ever did it when I was there, and to see this punitive way of going about their enforcing the law is certainly disconcerting.

With that, I yield back the balance of my time. Thank you, Mr. Chairman.

Chairman NEUGEBAUER. I thank the gentleman.

Now the gentleman from Colorado, Mr. Tipton, is recognized for 5 minutes.

Mr. TIPTON. Thank you, Mr. Chairman. And I would like to ask unanimous consent to enter into the record a letter from the Independent Community Bankers of America supporting H.R. 1553.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. TIPTON. Thank you, Mr. Chairman. I would like to thank you and the ranking member for holding this hearing today, and to thank our panelists for taking the time to be here as well.

H.R. 1553, the Small Bank Exam Cycle Reform Act, a piece of legislation I introduced with Ranking Member Clay, is a targeted relief effort for community banks. These small banks, which did not cause the financial crisis, are unfortunately suffering from the regulatory blowback.

The legislation moves the asset threshold from $500 million to $1 billion for well-run institutions to qualify for an 18-month exam cycle. This proposal is based on an OCC recommendation and will help alleviate the burdens on community banks, as well as bank examiners, also permitting community banks to be able to focus their time and resources on the surrounding community rather than on the exam process.

Mr. Ireland, I appreciate your taking time to be able to be here today. One of the most pressing concerns that we hear from our constituent banks in my district is the cost of compliance, keeping in mind that these are small community banks that are locally owned and operated. Mr. Ireland, can you speak to on-site examination processes and what are some of the requirements in terms of preparation for an exam and resources that are used for an exam?

Mr. IRELAND. Typically, what will happen is that the examiners will tell the institution that they are coming in. They ask them to get together materials to respond to what they intend to examine, what they intend to focus on. And then they come on-site, and they are going to look at the bank's documentation, the bank's processes, the bank's procedures. Depending on how they view those, it may be more intensive or somewhat less intensive.

It is a time-consuming, costly process for the institution. I would point out, it is a time-consuming, costly process for the agencies as well. And what your bill does is requires them to more risk focus their examination process on the larger organizations and complex organizations where there are real problems. It is in agencies' interest just as well as it is in the interest of the smaller banks.

Mr. TIPTON. So it would be just common sense to be able to extend that for well-run banks?

Mr. IRELAND. I think it is.

Mr. TIPTON. Great. I appreciate your comments on that.

And I would like to be able to maybe perhaps now move to Mr. Sharp. You had cited in your testimony that the CFPB must respect the limits of its authority. And is it your sense that we are seeing the CFPB reach beyond what was original legislative intent?

Mr. SHARP. Thank you for that question, Congressman. Yes, we are seeing that, not everywhere, but we are certainly seeing it in a number of places. In fact, I would submit that some of what we are seeing, again in the indirect auto lending market, is a result of the Bureau trying to reach beyond a limitation that Congress put in front of it to regulate vehicle sales. They have used the lenders that they do regulate to sort of get to the auto dealers, who are exempted under the law, and we have an issue with that. And there are several other examples that I am happy to submit for the record if it would be helpful.

Mr. TIPTON. Great. And we would appreciate that.

And I think that brings us to Mr. Miller, who had served here in Congress. We have one man making a decision unilaterally, U.S. Chamber of Commerce, others are noting, going beyond legislative intent. As a former legislator who had sat in this committee, following your logic, can you speak as a former member of the committee on how that would benefit us here?

Mr. MILLER. First, I would disagree with Mr. Sharp about the auto loan guidance.

Mr. TIPTON. We can go on that, but I am just talking about the policy of having power relegated to one person. How would that benefit the citizens?

Mr. MILLER. There are agencies who do it both ways. There are agencies that have a commission.

Mr. TIPTON. They do, but we are dealing with the CFPB that has one.

Mr. MILLER. And then there are agencies that have one. And there are some advantages in having a commission, as Ms. Peirce pointed out. And I agree with what Mr. Neugebauer said, it provides some more complex—

Mr. TIPTON. Do you think legislative intent, as a former legislator, Mr. Miller—

Mr. MILLER. Oh, I know very well the legislative intent. I entered into the first bill.

Mr. TIPTON. Should it be respected, sir?

Mr. MILLER. What is that?

Mr. TIPTON. Should it be respected?

Mr. MILLER. The bill as introduced is not the bill as passed. So the legislative intent is usually what Congress did, not what somebody earlier said.

Mr. TIPTON. So you don't believe or you do believe that legislative intent should be respected?

Mr. MILLER. What?

Mr. TIPTON. You do or don't believe legislative intent should be respected?

Mr. MILLER. Yes, but it—

Mr. TIPTON. Okay. I appreciate that.

Now, if we were to empower Mr. Neugebauer with all of the power in this committee to be able to make the determinations on which bills are going to be moving forward, what is going to be heard, would you be comfortable with that?

Mr. MILLER. Actually, that was pretty much my experience. I didn't always like it.

Legislative intent is not what one or two Members thought. It is not how a bill is introduced. It is what Congress did. It is what the bill passed. So the fact that the bill was originally introduced with a commission does not mean it was the legislative intent to have a commission, when Congress in fact passed a bill with a director.

Chairman NEUGEBAUER. The time of the gentleman has expired.

I now go to the gentleman from Pennsylvania, Mr. Rothfus, for 5 minutes.

Mr. ROTHFUS. Thank you, Mr. Chairman.

And thanks to our panel this afternoon. It is getting late here.

Before I turn to my questions for the panel, I would like to first take a moment to commend Mr. Westmoreland on his Financial Institutions Examination Fairness and Reform Act, of which I am a cosponsor, and to offer this letter that was sent by a community bank in my district. The letter expresses strong support for the proposed legislation and includes examples to illustrate why changes to the examination appeals process are desperately needed. The letter also stresses the vital need for independence in the appeals

process, and it offers what I believe are good ideas about how we can go about ensuring that.

Mr. Chairman, I would ask unanimous consent to enter this letter into the record.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. ROTHFUS. I would also like unanimous consent to enter letters of support for H.R. 1660, the Federal Savings Association Charter Flexibility Act, from the American Bankers Association, the Independent Community Bankers of America, and the Pennsylvania Association of Community Bankers.

Chairman NEUGEBAUER. Without objection, it is so ordered.

Mr. ROTHFUS. Thank you, Mr. Chairman.

Mr. Ireland, I would like to direct your attention for the next few minutes to H.R. 1660, the Federal Savings Association Charter Flexibility Act, which I have introduced. As you may recall, this legislation permits a Federal savings association to elect to operate, subject to supervision by the Office of the Comptroller of the Currency, with the same rights and duties of a national bank.

On a basic level, could you please describe how Federal savings associations differ from other types of financial institutions and what sort of constraints they face as a result of their structure?

Mr. IRELAND. Many of the savings associations are a mutual form of structure. They are not the for-profit corporate form of structure that a national bank has. And coming from a different charter and a somewhat different regulatory structure, their powers are different than a national bank. In some respects, they are more limited in the lending that they can do and they have a qualified thrift lender test, for example.

Mr. ROTHFUS. I have heard from many Federal savings associations in western Pennsylvania and around the country that they would like the option of offering a broader range of services so they can better serve the needs of their local communities. Why wouldn't these institutions just convert their charter?

Mr. IRELAND. It costs money. You have to redo your corporate structure and you are going to have to go through an application process to become a national bank. It is going to take time and money. And what your bill does is it allows them to do that in a streamlined, seamless way without that cost and time.

Mr. ROTHFUS. Would H.R. 1660 effectively address those costs and burdens—

Mr. IRELAND. Yes.

Mr. ROTHFUS. —particularly for smaller institutions?

Mr. IRELAND. Yes.

Mr. ROTHFUS. In your testimony, you state that it is important to appropriately balance caution and restraint with the ability to innovate and to provide financial services to consumers and businesses. Do you believe that H.R. 1660 achieves that appropriate balance of a Federal savings association?

Mr. IRELAND. Yes, I can't see any reason why you wouldn't do H.R. 1660. I just don't see another side to it. It is a streamlining of the regulatory system. You get benefits out of it. I don't see any costs.

Mr. ROTHFUS. Ms. Peirce, you state in your testimony that H.R. 1660 is consistent with regulatory streamlining efforts that are

being undertaken by the Office of the Comptroller of the Currency and the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA) process. Can you explain this in more detail?

Ms. PEIRCE. Sure. The EGRPRA process is intended every 10 years to take a look at regulatory burdens on banks and to see if there are any ways that those can be lightened that are consistent with safety and soundness. And this is an area where the OCC has focused some attention, and it seems like this is an area where you could eliminate a regulatory burden, a regulatory cost without causing any safety and soundness issues.

Mr. ROTHFUS. So would H.R. 1660 achieve those results?

Ms. PEIRCE. Yes. That seems to be the purpose of the bill, is to eliminate regulatory cost.

Mr. ROTHFUS. You mentioned in your testimony that financial regulation needs periodic updating to reflect changing conditions on the ground for both regulators and regulated entities. Do you believe that H.R. 1660 fits within that category?

Ms. PEIRCE. Yes. I think it is an effort that is designed to look at the existing structure and say: Hey, does this make sense, can we make a change to it?

Mr. ROTHFUS. Here is a question, if each of the members of the panel could respond. The title for this hearing is, "Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence." Do you believe that H.R. 1660 fits that description, advances that goal?

Mr. Sharp?

Mr. SHARP. Yes.

Mr. ROTHFUS. Ms. Peirce?

Ms. PEIRCE. Yes.

Mr. ROTHFUS. Mr. Ireland?

Mr. IRELAND. Yes.

Mr. ROTHFUS. Congressman Miller?

Mr. MILLER. I am simply not that familiar with your legislation. I'm sorry.

Mr. ROTHFUS. I would invite you take a look at it.

Thank you. And I yield back.

Chairman NEUGEBAUER. I thank the gentleman.

And now one of our newest members of the full committee and the subcommittee, Mr. Emmer from Minnesota, is recognized for 5 minutes.

Mr. EMMER. Thank you, Mr. Chairman.

And thank you to the panel. Thanks for coming back. I love this place. You sit down, you get into something, a bell goes off, and you jump up and run somewhere else.

Very quickly, there are so many places that you can go, but in 5 minutes, I just have a few questions. First, Mr. Sharp, for you, representing the business community, if you will, would you agree with me that in order for businesses to not just survive, but to thrive and create new opportunities, there is a certain amount of certainty, stability, predictability that is required in the marketplace?

Mr. SHARP. Yes. Absolutely.

Mr. EMMER. And it helps businesses to plan for the future. Would you agree with that?

Mr. SHARP. Yep. Absolutely. Again, one of our sort of central tenets is companies need clear rules of the road.

Mr. EMMER. And, Ms. Peirce, you have talked a little bit about regulation. Not all regulation and government oversight is bad. There is a place for it. But when you have a moving target, when the rules of the road, as Mr. Sharp was just talking about, are constantly on the move, that is not a good thing. Wouldn't you agree?

Ms. PEIRCE. Yes. It is a very difficult environment within which to do business, and often old rules just get left in the place and new rules get piled on and there is constant change.

Mr. EMMER. And, Mr. Ireland, for you, what is important is not just the predictability, but competition in the marketplace is a good thing. And I know that the regulations that a lot of these pieces or these proposals are addressing, the regulations that they are trying to remedy or address were intended to protect the consumer, the customer, but, in fact, if you suffocate the ability for the marketplace to work, if you by overregulation in creating these unintended consequences eliminate competition—for instance, community banks, we have closed 1,500 community banks in this country since Dodd-Frank was enacted and we are consolidating countless numbers every month.

That consequence related to this regulation, would you agree that erodes the quality that the consumer would like to get in the marketplace?

Mr. IRELAND. It reduces access to financial services for consumers and small businesses and, in some cases, larger businesses. Personally, I think that the state of our economy and our recovery is in part a reaction to the way the financial services industry is being regulated.

Mr. EMMER. Right. Thank you.

Where I want to end, because this is the one area that I am going to touch on in my last 2 minutes, I have major concerns with the all-powerful, unaccountable, one-person, top-down CFPB, this thing called the CFPB. And I can't believe that anyone with a straight face would say that absolute power is good, which is why I support the chairman's bill for a board, as opposed to one person.

But of the many examples or problems that I or my constituents would point out when it comes to this CFPB, not the least of which is the lack of accountability and oversight by Congress, one of the big ones I have has to do with auto loans. And I have a quick story in the last minute.

I have an auto dealer in St. Cloud, Minnesota, in my district, who wrote to me and said: I had a referral customer come into my dealership. She didn't really know what to expect, because she had bad credit due to student loan issues. She told the dealer right away that she had bad credit from student loans, but she was making partial payments. After reviewing her credit application, the dealer submitted it to five banks. Two turn-downs was the result, one conditional approval, and two approvals. One of the approvals came in at a rate of 13.99 percent and the other came in at a Tier 2, which has a subvented rate of 2.9 percent.

After showing this young lady the car and the payment with the interest rate that they were able to get approval for, they had a

customer on their show floor who was in tears of joy, and in his words, " We had a customer for life."

What he is concerned about is this rulemaking authority and maybe requiring to eliminate competition in the marketplace, the result of a one-size-fits-all rule. I have major concerns about that too. That is why I am a cosponsor of the Guinta bill.

But one of the three that I just asked—and no offense to Mr. Miller, but I think I know where he is at on this—I would like to—I guess I ran out of time.

Chairman NEUGEBAUER. I thank the gentleman.

Mr. EMMER. Maybe I could follow up with you after.

Thank you, Mr. Chairman.

Chairman NEUGEBAUER. Without objection, I am pleased to recognize the gentleman from Maine, Mr. Poliquin, who is not a member of the subcommittee, but is a member of the full Financial Services Committee, for 5 minutes.

Mr. POLIQUIN. Thank you, Mr. Chairman, very much. I appreciate the opportunity to sit on this panel this afternoon, and I salute you and everybody else on the committee and those testifying before us today to address about a dozen very important bills, all of which are designed to help not only our hard-working families up in Maine's Second District, which is the west-central, northern, and down east part of our great State, but all across America.

I must speak up, Mr. Miller, and this is directed to you, sir. I was a little bit surprised, sir, when we were talking about, as Mr. Emmer did and other folks here, about the CFPB. This is an organization, a regulator that has tentacles throughout our economy into all of our families' homes, all of our small businesses, and here is a fellow who runs this organization, who is appointed by the President, has a 5-year term, reports to nobody, and there is no appropriation process, so Congress has very little, if any, oversight. The money to run the CFPB comes from the from the Federal Reserve, so there is no oversight.

So when you, sir, with all due respect, state that you think that is a great structure, well, when I was State treasurer in Maine—I am not done, sir—when I was State treasurer in Maine, we had a problem with other agencies like this, and we made sure they were accountable to the State legislature, accountable to other folks, and it corrected a lot of problems that we had.

So I am a little bit disappointed with you, but I do understand that you have the right to your opinion. I just disagree with it.

Now, moving on, if I may, Mr. Chairman, I am very pleased to support and cosponsor Congressman Barr's bill. This is a very thoughtful bill that was put together in trying to deal with the liquidity problems in our commercial banks, our small commercial banks and community banks in Maine and our credit unions throughout the State have in extending credit and loans to families and small businesses they might have known for 3 or 4 generations.

So when you have, for example, someone trying to borrow money to maybe buy a pickup truck up at the Quirk Chevrolet in Bangor and they want to borrow the money from Bangor Savings Bank, why should Bangor Savings Bank be under the same regulatory environment of some of our largest money center banks that have

tentacles throughout our economy, especially when this bank is going to assume complete control and authority and responsibility for that loan, not sell it to the secondary market? It doesn't make any sense to me.

So I want to salute, Mr. Chairman, Mr. Barr for trying to make it very simple and easy for these banks to continue to lend credit throughout our economy.

Now, I would like to bring my attention in my final couple of minutes, Mr. Chairman, to a bill that I am sponsoring with Mr. Ellison from Minnesota. It is H.R. 2091. Now, this is a very, very important bill in that those of us who have been blessed with kids understand that we as parents have a unique responsibility to care for our kids, keep them safe, and make sure they have a safe place to live, they have enough to eat, and they get enough to put on their plate, they are well-educated and clothed.

This bill makes a very small technical change that is so important. It is called the Child Support Assistance Act, H.R. 2091, and it simply makes it easy for our child support agencies to make sure they have the ability to collect parental, noncustodial parental assistance for families who have been designated, and parents, noncustodial parents who have been designated to provide child support to these families. And it does not impinge in any way on the rights that these parents have. It just makes the child support agencies better able to access their employment history, such that these payments can be made on behalf of these kids to make sure that they are cared for.

So I want to thank the chairman for this opportunity to speak up on behalf of this bill, the Child Support Assistance Act, H.R. 2091. And I would like to, if I may, Mr. Chairman, ask unanimous consent to enter a letter into the record from the National Child Support Enforcement Association, which supports this bill. And again, I give a special thanks to Mr. Ellison from Minnesota for cosponsoring this for me. And I ask everybody on this committee to stand up and support an opportunity to help our kids.

Thank you very much, Mr. Chairman. I yield back.

Chairman NEUGEBAUER. Without objection, the gentleman's letter will be made a part of the permanent record.

I would like to thank our witnesses for your testimony today, and more importantly, I want to thank you for your patience. This is kind of the season where things like this happen, and you have been great troopers and I appreciate that.

Without objection, I would like to also submit the following statements for the record: the Conference of State Bank Supervisors; the Independent Community Bankers of America; the American Bankers Association; the National Association of Federal Credit Unions; and the Joint Trades in support of H.R. 1266. Without objection, those statements will be made a part of the record.

The Chair notes that some Members may have additional questions for this panel, which they may wish to submit in writing. Without objection, the hearing record will remain open for 5 legislative days for Members to submit written questions to these witnesses and to place their responses in the record. Also, without objection, Members will have 5 legislative days to submit extraneous materials to the Chair for inclusion in the record.

And with that, the hearing is adjourned.
[Whereupon, at 5:30 p.m., the hearing was adjourned.]

A P P E N D I X

June 11, 2015

TESTIMONY

OF

OLIVER IRELAND

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON FINANCIAL SERVICES

EXAMINING LEGISLATIVE PROPOSALS TO PRESERVE CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

JUNE 11, 2015

Chairman Neugebauer, Ranking Member Clay, and members of the Subcommittee, my name is Oliver Ireland. I am a partner in the financial services practice of the firm Morrison & Foerster LLP here in Washington DC. I have over forty years' experience as lawyer in the area of the regulation of banking institutions. I spent over twenty-five years as an attorney in the Federal Reserve System, including fifteen years as an Associate General Counsel at the Board in Washington working on a wide range of issues. Since leaving the Federal Reserve, I have spent fifteen years in private practice representing banks and other financial institutions. I am pleased to be here today to address legislative proposals to improve our system for regulating banking institutions.

In this hearing, the Subcommittee is considering a dozen different proposals that cover a broad range of issues. My testimony will focus on the most significant proposals where I believe that I can offer the most value to the Subcommittee, but I will be happy to address questions on any of the proposals to the best of my ability. As an initial matter, however, I would like to voice my support for the Subcommittee's efforts to examine the bank regulatory system at this time. It is important to seek improvements in a growing economy as well as in times of stress. Significant adverse events in our banking system almost always trigger legislation designed to address the problems that led to those events as they are perceived at the time. Later on, with the benefit of hindsight, it often becomes apparent that our bank regulatory system has become overly constraining whether due to the remedial legislation or to the normal evolution of banking services and markets.

The most recent financial crisis was followed by the Dodd-Frank Wall Street Reform and Consumer Protection Act, which was enacted almost five

years ago. Although that Act is still in the process of implementation, it is not too early to look again at our regulatory system to see if we have appropriately balanced caution and restraint with the ability to innovate and to provide financial services to consumers and businesses.

The proposals that the Subcommittee is considering today include proposals dealing with the structure and the actions of the Consumer Financial Protection Bureau, proposals addressing the examination process, and proposals relating to state governments' access to information about individuals. As in the case of virtually all financial services legislation, the details of individual proposals may raise technical issues that need to be worked out, but I believe that the thrust of these proposals is constructive. In light of where we are in the legislative process, I will focus on the policy issues raised by these proposals, although I will be happy to discuss the details.

Turning to the individual proposals, H.R. 1266, The Financial Product Safety Commission Act of 2015, would replace the Director of the Consumer Financial Protection Bureau with a five-member bipartisan commission.
I strongly support this change. Executive departments in our government are typically headed by an individual, or Secretary, of the department that is appointed by the President with the advice and consent of the Senate. This structure enables the President to be able to implement policies with the President's own team. An advantage and disadvantage of this system is that when policies change with a new administration, policy changes can be implemented relatively quickly.

In the area of financial services regulation we have often, although not always, chosen a different model. The Federal Reserve Board, the Federal Deposit Insurance Corporation, the Securities and Exchange Commission and

the Commodity Futures Trading Commission, as well as any number of other independent agencies, are headed by boards or commissions that provide the expertise and balanced views of several members. The board or commission structure provides greater continuity and stability of policy than does an individual head of an agency. This continuity and stability helps to foster public confidence in our regulated financial institutions and helps to provide those institutions with confidence to innovate and invest. Continuity and stability are every bit as important in retail financial services as they are in other financial services. Even the most vigorous consumer advocate should recognize that dramatic shifts in policy in consumer protection will not be in consumers' longer run interests. Replacing the director of the Consumer Financial Protection Bureau with a bipartisan commission, particularly now that the Bureau is established, would provide for an approach to consumer protection that benefits from the views of the differing members of the commission and that is not subject to abrupt changes in direction that could come from individual directors.

H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act, would establish procedural steps, including public notice and comments, for the Consumer Financial Protection Bureau to follow before issuing guidance primarily related to indirect auto financing. Where agencies, such as the Bureau, have broad enforcement authority, the issuance of "guidance" is often the effective equivalent of a rule, but without the procedural protections established by the Administrative Procedure Act for rulemaking. The procedures that would be required by H.R. 1737 would improve the process for the issuance of guidance by the Bureau generally, as well as in the area of indirect auto financing.

H.R. 1941, The Financial Institutions Examination Fairness and Reform Act, would make changes to the bank examination process, including creating an Office of Independent Examination Review in the Federal Financial Institutions Examination Council to review and investigate complaints from financial institutions concerning examinations, examination practices, or examination reports. Financial institutions would be given the right to obtain an independent review of material supervisory determinations. The bank examination process allows federal bank supervisors to examine the activities of banking institutions in almost every detail, and the powers of the federal bank regulatory agencies to require changes to practices in the name of safety and soundness are broad. The importance of the safety and soundness of banking institutions to our financial system requires these detailed examinations and broad discretion to protect the safety and soundness of institutions, as well as the public purse, through the backing of the Federal Deposit Insurance fund with the full faith and credit of the United States.

The federal bank regulatory agencies bring to this task great expertise developed through the examination of all federally insured banking institutions over decades, giving them the ability to do peer comparisons at a point in time as well as over time. But examiners are not infallible, and even independent appeals processes within regulatory agencies may be influenced by a predisposition to support the judgments of the agency's expert examiners. In private practice, it is not uncommon to hear reports from banking institutions about disputes between banking institutions and their examiners and the examining agency where the banking institutions feel strongly that the examiners' judgments are in error.

Providing for an independent review of material supervisory determinations as contemplated by H.R. 1941 would provide banking institutions with the ability to obtain an independent and expert review of these determinations, and thereby should increase their confidence in the examination process without placing the bank regulatory agencies in conflict with their own examination staffs.

H.R. 2213 would provide a temporary safe harbor from enforcement of the integrated disclosure requirements for mortgage loan transactions under the Real Estate Settlement Procedures Act and the Truth in Lending Act until January 1, 2016—five months after the current August 1, 2015 effective date. The new requirements for mortgage loan transactions are detailed and complex. Depending on the transaction, there may be over one hundred transaction-specific disclosures that must be provided to the consumer. Fee and other information must be obtained from third parties, including title companies, appraisers and others. Estimated disclosures must be provided to consumers within three business days of receipt of an application, and final disclosures must be given to the consumer at least three business days before closing the transaction.

The new rules present numerous challenges. Mortgage lenders must: create new policies, procedures, forms and systems that capture existing and new terms and features; integrate the new policies, procedures, forms and systems with existing policies, procedures, forms and systems; train employees, and test to make sure that everything works. The modest safe harbor period provided by H.R. 2213 would help to ensure the uninterrupted availability of mortgage credit during the transition to the new rules.

H.R. 1210, The Portfolio Lending and Mortgage Access Act, would create a safe harbor from litigation or supervisory action on the basis that a

mortgage loan is not a qualified mortgage for certain mortgages held on the balance sheet of a depository institution. When a depository institution holds a mortgage loan on its balance sheet, it retains the full risk of the loan and has a strong incentive to maintain high underwriting standards. This safe harbor would encourage depository institutions, particularly smaller depository institutions, to continue make mortgage loans in the face of the complexity and attendant risks of the new mortgage rules.

H.R. 766, The Financial Institutions Customer Protection Act of 2015, and H.R. 1413, The Firearms Manufacturers and Dealers Protection Act of 2015, both address the problem of access to bank services, particularly credit and deposit and payment services by legal businesses. Access to credit and deposit and payment services is the lifeblood of any business. Without access these services, no business of any size can survive. But federal banks regulators' concern for reputational risk and the Department of Justice's concern for potential illegal activity on the part of some bank customers has led some banks to be reluctant to provide these services to a variety of businesses. The potential inability to obtain banking services threatens the viability of these businesses, even though these businesses have not been found to be engaged in illegal activity.

If businesses are operating in violation of applicable laws, the appropriate response is direct action through the enforcement of those applicable laws, not indirect action to discourage banks from providing services to these businesses. In particular, the use of "reputational risk" by bank regulators for this purpose is inappropriate. Banks, even more than many other businesses, depend on their reputations and public confidence. Even with deposit insurance, banks depend on their reputations and public confidence in order to borrow funds by attracting deposits. But the issues that

adversely affect banks' ability to attract deposits are limited and the implementation of social and criminal policies is most appropriately achieved through actions directed at the specific businesses that are the subject of the concern so that prohibited acts can be clearly defined and the protections of due process applied, rather than addressing these issues indirectly by discouraging the provision of banking services.

H.R. 1553, The Small Bank Exam Cycle Reform Act of 2015, H.R. 1660, The Federal Saving Association Charter Flexibility Act of 2015, and H.R. 2287, The National Credit Union Budget Transparency Act, would make seemingly technical, but nonetheless important, changes to the supervisory process for banks and credit unions. H.R. 1553 would increase the size of depository institutions eligible for an eighteen-month examination cycle instead of an annual examination cycle. This change would benefit both banks and bank regulators without jeopardizing the stability of our financial system. Examinations consume time and resources at both the examining regulator and at the institution examined. Reducing the examination frequency for smaller institutions would facilitate a more risk-based approach to examinations.

H.R. 1660 would allow federal savings associations to elect to operate with the powers of national banks, including higher lending limits, without going through the expense of corporate restructuring and applying for a national bank charter. Both federal savings and loan associations and national banks are regulated by the OCC. A similar provision has worked well in Massachusetts and I can see no reason not to allow this election.

H.R. 2287 would provide greater transparency in the National Credit Union Administration's budgeting process. While the National Credit Union Administration is an independent agency and is self-funded, greater

transparency can provide discipline from public accountability, without jeopardizing the agency's policy independence.

H.R. 2091, The Child Support Assistance Act, and the draft bill prepared by Mr. Williams are both focused on access to information. H.R. 2091 would amend the Fair Credit Reporting Act to make it a permissible purpose to obtain a consumer report where the consumer report is requested by the head of a state or local child support enforcement agency or other authorized state or local government official to enforce a child support order, and by deleting the requirement for ten days' prior notice to the consumer for obtaining consumer reports in connection with obtaining consumer reports in connection with child support. The broadening of the permissible purposes and the removal of the prior notice requirement would facilitate the administration of state and local child support programs.

The Williams bill would direct the Attorney General to provide criminal history information to state officials to facilitate background checks on non-depository financial service providers in addition to the mortgage loan originators. I understand that access to this information can cut as much as three weeks out of the process for licensing these financial service providers. This is the kind of streamlining of regulatory processes that promotes confidence in our regulatory system and should be encouraged.

Thank you for your attention. I would be happy to address any questions that you may have.

Testimony of Brad Miller

House Committee on Financial Services

Subcommittee on Financial Institutions and Consumer Credit

Hearing entitled "Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence," June 11, 2015

Good afternoon Chairman Neugebauer, Ranking Member Clay and members of the Subcommittee. I'm Brad Miller. I served for an eventful decade in the House of Representatives and as a member of the House Financial Services Committee. I am now a Senior Fellow at the Roosevelt Institute and Of Counsel to the law firm of Grais and Ellsworth.

The invitation to appear today asked me to assess twelve legislative proposals on a variety of topics, and to do so in five minutes. Like the other witnesses, I will not attempt that.

But this pudding does have a theme. The bills are based on the exculpatory "narrative" about of the financial crisis that industry participants were victims, not perpetrators. Lending practices that might appear predatory or even crooked to the unsophisticated were really an honest effort to meet consumer needs. The industry should now be relieved of any annoying regulatory requirement that was based on an unjust accusation to the contrary.

That narrative has been dutifully repeated on Wall Street and in Washington for years, but is not credible to most Americans, because it is not true.

The bills would unlearn the real lessons of the crisis. Here are some examples:

There's an old joke that a man jumped off the Empire State Building and as he passed the 60th floor, he said "So far, so good." HR 1941 would codify "so far, so good" as the examination standard for commercial real estate loans held by federally-insured institutions, large and small alike. If a developer made payments on a loan, then the examiner would treat the loan as performing and look no further. It would not matter if the loan was interest-only and had an impending balloon payment, if the collateral for the loan had collapsed in value and the loan was deeply underwater, if the project for which the developer had borrowed was in deep trouble and the loan was very large, if that bank or other banks had many such loans, or if the developer's creditworthiness had declined and the developer would not qualify for a rollover loan. The legislation would obviously make it very difficult for regulators to keep a problem from becoming a catastrophe, not just for a given institution but for the financial system.

The bill also creates an appeal from any supervisory determination that provides far more process than is due. An appeal would not review the agency's decision for error or caprice, but would be a de novo review with no deference to the agency's fact findings, expertise or judgment. In other words, it would

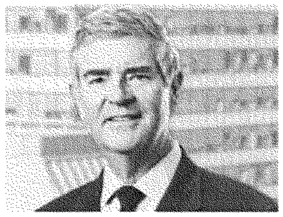
be a second guess. In extremis too-big-to-fail banks would hire lawyers to block urgent supervisory actions by appeal after appeal, and cripple efforts to prevent or contain a crisis.

HR 1210 exempts depository institutions, also large and small alike, from the ability-to-repay rules for mortgages held in an institution's portfolio, not sold to the securitization market, which is still comatose anyway. The argument is that the purpose of the requirement was to prevent foolish mortgages that create systemic risk, and lenders would not let credit standards slide if they kept the mortgages. That argument is not supported by the experience of the financial crisis. Washington Mutual and Wachovia both got in trouble because of portfolio mortgages.

More important, the purpose of the ability-to-repay rule is equally to protect consumers against predatory, equity-stripping mortgages. Asset-based predatory mortgages are no less predatory if held in portfolio, and homeowners can lose all of the equity in their homes, which for most homeowners is the bulk of their life's savings, and still pose no risk to predatory lenders even if held entirely in portfolio.

Finally, the failure by government agencies to investigate misconduct in the financial sector, including criminal fraud, and hold economically and politically powerful institutions accountable has offended the sense of justice of millions of Americans, including me. Important government powers to investigate criminal conduct have gathered dust while Americans seethed. HR 766 provides a surprising solution to that problem: it strips the Department of Justice of much of the power to investigate and hold financial institutions accountable. Congress enacted FIRREA in response to the savings and loan crisis of a generation ago, in which criminal fraud was rampant. More than 800 bank officials went to prison for financial crimes. FIRREA allows the DOJ to seek civil penalties for violation of certain criminal laws that affect a federally insured financial institution. FIRREA provides a ten-year statute of limitations, a standard of proof of preponderance of the evidence, and enhanced investigative powers, all important tools to fight financial crime. The courts have held that FIRREA applies equally when financial institutions are the victims of financial crimes, and when financial institutions are the perpetrators of financial crimes. HR 766 would amend FIRREA to apply only when financial institutions are victims of a crime, not when financial institutions are the perps. The lesson of HR 766 would be that our nation promises "equal justice under law," but some are more equal than others, much more equal.

The narrative for the financial crisis that I described earlier is very popular at fundraisers in Washington. But go home this weekend and talk to the people you represent. Ask them if you think Wall Street was unjustly accused of wrongdoing in the financial crisis and since, and that law enforcement agencies and government regulators have bullied them. You probably will get a very different response.



Brad Miller is a Senior Fellow at the Roosevelt Institute. Prior to joining Roosevelt, he served for a decade in the United States House of Representatives, representing North Carolina's 13th district, and was a Senior Fellow at the Center for American Progress. He is also Of Counsel for Graise & Ellsworth LLP.

As a member of the House Financial Services Committee, Mr. Miller led efforts to enact financial reform legislation, including legislation to prohibit predatory mortgage lending and create the Consumer Financial Protection Bureau, or CFPB. He also led efforts to address the foreclosure crisis and reform the private mortgage securitization market.

As chairman of the Investigations and Oversight Subcommittee of the House Science Committee, Mr. Miller led investigations into environmental contamination and public health risks. He also worked with the House Democratic leadership to develop the legal strategy to enforce congressional subpoenas issued to the Bush Administration concerning the firing of U.S. Attorneys.

Mr. Miller has been interviewed on almost every cable news channel, including MSNBC, CNN, Fox News, Fox Business, CNBC, Bloomberg, Current TV, and Al Jazeera America, and has frequently been quoted in national publications on a variety of issues, especially financial reform and housing. He has published opinion articles in national publications, including *Politico, Roll Call, The Hill, The Wall Street Journal, American Banker, Bloomberg View, The New Republic, Huffington Post,* and *Salon.*

Education
- Columbia University, JD 1979
- London School of Economics, MS 1978
- The University of North Carolina at Chapel Hill, BA 1975

Other Employment
- Senior Fellow, Center for American Progress, 2013-present

Previous Employment
- United States House of Representatives, Member 2003-2013
- North Carolina Senate, Member 1997-2002
- North Carolina House of Representatives, Member 1993-1994
- Private law practice with various firms, 1980-2002

Judicial Clerkship
- The Honorable J. Dickson Phillips, Jr., U.S. Court of Appeals for the Fourth Circuit, 1979-1980

Bar Admissions
- North Carolina, 1979
- EDNC, MDNC, Court of Appeals for the Fourth Circuit

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TESTIMONY

EXAMINING LEGISLATIVE PROPOSALS TO PRESERVE CONSUMER CHOICE AND FINANCIAL INDEPENDENCE

HESTER PEIRCE

House Committee on Financial Services
Subcommittee on Financial Institutions and Consumer Credit

June 11, 2015

Chairman Neugebauer, Ranking Member Clay, and members of the Subcommittee: thank you for the opportunity to discuss the set of legislative proposals under consideration today. I am not able to take a position on these bills, but I will discuss some ways in which these proposed legislative changes could

- encourage financial institutions to take responsibility for their decisions,
- limit bank regulators' discretion and enhance regulatory accountability, and
- update the regulatory framework to enable it to operate more effectively.

Financial regulation should consist of clear, consistently enforced rules within which customers and financial institutions can freely interact. A well-functioning market enables people who need financing to obtain it efficiently and at a competitive price. Market forces reward financial companies that serve consumers well and discipline firms that fail to provide products and services in a form and at a price that consumers want.

It is hard to design financial regulations that enable the market to function as it should—rewarding firms that serve consumers well and eliminating companies that do not. A statute or regulation may work differently in practice than its drafters anticipated, particularly as the circumstances in which it operates change. Revisiting statutes and regulations periodically to reflect changed circumstances or to respond to unintended consequences is a useful exercise that can lead to more efficient and effective financial regulation.

H.R. 1210: AMENDING THE QUALIFIED MORTGAGE RULES

Dodd-Frank's "qualified mortgage" and "ability-to-repay" provisions are designed to ensure that financial institutions do not make loans to people who cannot afford to repay them. A subset of mortgages known as qualified mortgages enjoy a presumption that a lender has satisfied the ability-to-repay requirements. Changes to these

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rules are warranted to ensure that consumers are able to get mortgages that are tailored appropriately to their needs and their risk profiles.

Although many factors are at work in the mortgage market, the qualified mortgage rules have affected the financing options available to homebuyers. In a survey of small banks conducted in summer 2013 by the Mercatus Center at George Mason University, approximately 30 percent of respondents planned to make only qualified mortgages and a third were uncertain whether they would make nonqualified mortgages.[1] Lenders, likely driven in part by liability concerns, are not making loans that fall outside the qualified mortgage definition. The National Association of Realtors reported that in the first quarter of 2015, only 1.2 percent of originated mortgages did not fit the definition of qualified mortgages.[2] Many respondents in the Mercatus survey expressed confusion and concern about the qualified mortgage rules and anticipated these rules would shape and perhaps shrink their future mortgage offerings.[3] A third of the National Association of Realtors survey respondents reported being "unable to close mortgages due to a requirement of the qualified mortgage rule" in the first quarter of 2015.[4] Residential mortgages were the product or service most often identified by surveyed banks as a candidate for discontinuation as a result of Dodd-Frank.[5] A recent study by the John F. Kennedy School of Government at Harvard University documents the falling share of bank participation in mortgage originations; depository institutions accounted for approximately 72 percent of new purchase mortgage originations in 2014, compared to more than 90 percent in 2010.[6]

Regulatory dictation of loan terms and underwriting practices is not the most effective way of ensuring that a borrower will have the ability to repay. More effective incentives arise in an environment where a financial institution retains the downside of the borrower failing to repay. Under H.R. 1210, mortgages that depository institutions hold in their own portfolios would be deemed qualified mortgages. A financial institution that retains a loan's credit and interest-rate risk has a keen interest in engaging in thorough, sound underwriting to determine the borrower's ability to repay. Allowing a financial institution to make a customer-specific lending decision on a loan it intends to hold in its portfolio can be a more effective way of protecting consumers than regulatory attempts to micromanage mortgage terms with inflexible standards.

H.R. 1553 AND H.R. 1941: EXAMINATIONS

Regulatory reforms should be accompanied by reforms in the examination process. Banking regulators are required to conduct annual, on-site, full-scope examinations of insured depositories.[7] These on-site examinations require regulators and examined institutions to make substantial time and resource commitments. The burden of these exams falls disproportionately on smaller institutions.[8] The existing statutory framework recognizes the

1. Hester Peirce, Ian Robinson & Thomas Stratmann, *How Are Small Banks Faring Under Dodd-Frank?* 52 (Mercatus Ctr. at Geo. Mason U., Working Paper, 2014), *available at* http://mercatus.org/sites/default/files/Peirce_SmallBankSurvey_v1.pdf.
2. National Association of Realtors, 6th Survey of Mortgage Originators 4 (May 2015), *available at* https://www.scribd.com/document_downloads/266800139?extension=pdf&from=embed&source=embed.
3. Peirce et al., *supra* note 1, at 51–53.
4. National Association of Realtors Survey, *supra* note 2, at 6.
5. *Id.* at 30.
6. Marshall Lux & Robert Greene, *What's Behind the Non-bank Mortgage Boom?*, Fig. 4 (Harvard Kennedy School M_RCBG Associate Working Paper Series, Working Paper No. 42, 2015), *available at* http://www.hks.harvard.edu/content/download/76403/1714118/version/1/file/Final_Nonbank_Boom_Lux_Greene.pdf.
7. 12 U.S.C. § 1820(d)(1) (2013).
8. *See, e.g.*, Daniel K. Tarullo, Governor, Board of Governors of the Federal Reserve System, A Tiered Approach to Regulation and Supervision of Community Banks, Speech at the Community Bankers Symposium (Nov. 7, 2014), *available at* http://www.federalreserve.gov/newsevents/speech/tarullo20141107a.htm (acknowledging that "supervision can be burdensome, because community banks have a smaller balance sheet across which to amortize compliance costs"). Efforts are underway to get a more precise understanding of the role that regulation and supervision are playing in spurring consolidation in the banking industry. *See, e.g.*, Ron J. Feldman & Peter Schreck, *Assessing Community Bank Consolidation* (Federal Reserve Bank of Minneapolis Economic Policy Paper, Feb. 6, 2014), *available at* https://www.minneapolisfed.org/research/economic-policy-papers/assessing-community-bank-consolidation.

disproportionate burden by extending the examination cycle for small, healthy financial institutions to 18 months.[9] Raising the minimum size of banks eligible for this longer exam cycle from $500 million to $1 billion—as set forth in H.R. 1553—would reflect the reality that it is not only the smallest community banks that are suffering under regulatory and supervisory burdens.[10] The threshold increase would be consistent with other statutory and regulatory efforts to lighten the burden on community banks without compromising safety and soundness considerations.[11]

Regardless of their frequency, examinations are not worthwhile unless they are timely, thorough, rooted in carefully employed judgment[12] rather than inflexible checklists, and consistent across institutions. A robust, objective process for raising concerns about low-quality exams is one way to increase exam quality. H.R. 1941 would establish a new interagency mechanism for examination oversight, including a new appeals process.

An *intra*-agency appeals process already exists at some financial regulators, but examination concerns remain. In the words of University of Alabama School of Law professor Julie Hill, who extensively researched the appeals processes of four financial regulators, the appeals process is "a dysfunctional and seldom used system."[13] The existing appeals mechanisms do not provide an effective check on bank examiners. As Professor Hill notes, both financial institutions and regulators have an interest in a good examination process:

> Pursuing unnecessary enforcement actions diverts regulatory attention from pressing problems. If a financial institution expends significant time and effort addressing an erroneous determination, it may prevent the institution from addressing other important matters. Moreover, allowing erroneous [Material Supervisory Determinations] to persist undermines the credibility of the supervisory process.[14]

Professor Hill's finding that appeals are rare is consistent with the strong incentives for financial institutions to defer to the regulators that exercise continuing power over their businesses.[15] Even with anti-retaliation measures in place, it is very difficult to second-guess a regulator. Financial institutions would be more likely to avail themselves of an external, third-party appeals process such as the one set forth in H.R. 1941. Clarifying the interaction between the intra-agency and interagency appeals process would help to ensure that the new process has

9. 12 U.S.C. § 1820(d)(4).

10. *See, e.g.*, Peirce et al., supra note 1; Marshall Lux & Robert Greene, *The State and Fate of Community Banking* (Harvard Kennedy School M_RCBG Associate Working Paper Series, Working Paper No. 37, 2015), *available at* http://www.hks.harvard.edu/content/download/74695/1687293/version/1/file/Final_State_and_Fate_Lux_Greene.pdf; Tanya D. Marsh, *Reforming the Regulation of Community Banks After Dodd-Frank*, 90 Ind. L.J. 180 (2015).

11. For a discussion of some of these initiatives, see Jerome H. Powell, Governor, Board of Governors of the Federal Reserve System, Speech at the Annual Community Bankers Conference (May 14, 2015), *available at* http://www.federalreserve.gov/newsevents/speech/powell20150514a.htm.

12. Legislative attempts to constrain the legitimate exercise of bank examiners' judgment with regard to safety-and-soundness matters should be avoided.

13. Julie Andersen Hill, *When Bank Examiners Get It Wrong: Financial Institution Appeals of Material Supervisory Determinations* 4 (Univ. of Alabama, Working Paper, 2014) (Wash. U. L. Rev. (forthcoming 2015)), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2494634&download=yes.

14. *Id.* at 10.

15. Former BB&T CEO John A. Allison described, for example, the inability of his bank to resist regulatory pressure to participate in the Troubled Asset Relief Program:

> When TARP passed, the day afterwards, I got a call from our regulator, because I was a known opponent to TARP, the only large bank that was vocally opposed to TARP, and I got a very interesting message. This is a regulator of the FDIC. He says, "Listen, you know, John, BB&T has way more capital than you need by traditional capital standards; however, we decided we need new capital standards. We don't know what those new capital standards are going to be; however, we're confident that you don't have enough capital under these new standards unless you take the TARP money. And we've got an audit team ready to come in tomorrow, and we're pretty confident you will fail this audit unless you take the TARP money," and we said, "We'll take the TARP money."

John A. Allison & Wayne A. Abernathy, *The Financial Crisis and the Free Market Cure: A Conversation with John A. Allison*, 14 Engage 43, 45 (2013).

its desired effect.

H.R. 766 AND H.R. 1413: OPERATION CHOKE POINT

Through the examination process and less formal methods, financial regulators influence the business decisions of the institutions they oversee. Operation Choke Point—a cooperative effort between the Department of Justice and banking regulators to cut off certain firms' access to the banking system—is one example of how regulators can usurp banks' day-to-day management functions.

Absent overriding national security concerns, financial institutions—not their regulators—should decide which customers to serve. The FDIC seems to have recognized this principle in guidance it issued earlier this year, in which it "encourages institutions to take a risk-based approach in assessing individual customer relationships rather than declining to provide banking services to entire categories of customers."[16] Even with this guidance in place, the FDIC's participation in Operation Choke Point and its recent expressions of discomfort with certain industries suggest the need for clear statutory guidelines.[17]

H.R. 766, which constrains banking regulators' ability to direct depository institutions to terminate customer accounts, and H.R. 1413, which prevents federal agencies from interfering with gun and ammunition manufacturers' access to the financial system, would provide clear guidelines to regulators. These bills would give banks greater ability to choose their own customers, but financial institutions might instead continue to avoid stigmatized customer groups for fear of being second-guessed by examiners.

H.R. 2287: NATIONAL CREDIT UNION ADMINISTRATION BUDGET TRANSPARENCY

The National Credit Union Administration (NCUA) plays an important regulatory role but avoids basic accountability measures. For example, the NCUA does not routinely conduct economic analysis of its rules.[18] Moreover, the NCUA funds itself with credit union fees. Without the discipline of the congressional appropriations process, the NCUA's budget-setting process is not transparent. The NCUA is not subject to the healthy constraint of having to justify its spending decisions.

NCUA board member J. Mark McWatters, in his dissent from the 2015 budget, called for greater budget transparency and a public notice-and-comment process for the budget:

> As a Board, we should remain mindful that we are spending other peoples' money—that is, the scarce resources of federal and state chartered credit unions and their members. Any allocation of these funds should follow only after thoughtful reflection as to the necessity of the expenditures and whether the costs have been undertaken in the most efficient, effective, transparent, and fully accountable manner.[19]

H.R. 2287 would establish a formal process to provide greater budget transparency and to provide an opportunity for the NCUA to obtain valuable public feedback on its budget priorities.

16. FDIC, Statement on Providing Banking Services, Financial Institution Letter 5-2015 (Jan. 28, 2015), *available at* https://www.fdic.gov/news/news/financial/2015/fil15005.pdf.
17. *See, e.g.*, Michael B. Benardo, Chief, Cyber Fraud & Financial Crimes Section, Division of Risk Management Supervision, FDIC, Third Party Payment Processing Relationships 3 (Sept. 17, 2013), *available at* http://oversight.house.gov/wp-content/uploads/2014/05/Appendix-1-of-2.pdf (HOGR-3PPP000348) (listing "High Risk Merchants/Activities" including "Ammunition Sales," "Firearms/Fireworks Sales," "Pay Day Loans," and "Tobacco Sales"). *See also* Hester Peirce, *Operation Choke Point's Back Door*, PointOfLaw.com (June 14, 2014), available at http://www.pointoflaw.com/archives/2014/06/operation-choke-points-back-door.php.
18. For a discussion of the NCUA's economic analysis, *see* Hester Peirce, *Economic Analysis by Federal Financial Regulators*, 9 Geo. Mason J.L., Econ. & Pol'y, 569, 593–94 (2013).
19. J. Mark McWatters, Board Member, NCUA, Statement on the 2015 Operating Budget (Nov. 20, 2014), *available at* http://www.ncua.gov/News/Press/SP20141121McWatters2015BudgetStatement.pdf.

H.R. 1737 AND H.R. 1266: BUREAU OF CONSUMER FINANCIAL PROTECTION ACCOUNTABILITY

The Bureau of Consumer Financial Protection (CFPB), although newly created by Dodd-Frank, has adopted the bad habits of agencies that have been around much longer. One of these practices is the use of "backdoor rulemaking"—employing methods other than notice-and-comment rulemaking to impose obligations on companies.[20] Guidance documents, which agencies use to inform regulated entities about the agencies' expectations, are a common form of backdoor rulemaking. Guidance documents can be useful compliance guides for regulated entities, but they can also take on the character of formal rules.

The CFPB has issued numerous guidance documents. One that attracted particular attention pertains to auto lending.[21] Dodd-Frank exempted auto dealers from CFPB jurisdiction.[22] The guidance reached them by effectively imposing broad new fair-lending standards on the indirect lenders with whom auto dealers work.[23] Although couched in the soft language of suggestion, rather than the unwavering language of prescription, the guidance laid out specific steps for indirect lenders to take.[24] The companies and individuals affected by the guidance did not have an opportunity to comment before the guidance was issued. Although H.R. 1737 does not preclude the CFPB from conducting rulemaking through guidance documents, it signals the value of the notice-and-comment process and economic analysis for substantial guidance documents.

The fact that a single director heads the CFPB heightens backdoor rulemaking concerns. Any pronouncement from the agency's director has the appearance of being the agency's official position. By contrast, an offhand comment by the chairman of a commission-led agency looks less like a regulatory pronouncement, since official agency positions are established through commission votes.

The single-director model is problematic for other reasons. The CFPB's broad jurisdiction touches many parts of the economy and affects the ability of consumers to access affordable financial products. The agency's structure affects the way it carries out this mission. Particularly because of other constraints on the CFPB's accountability, one person makes decisions affecting the American public and large swaths of the financial industry. If the lone director uses less formal means than rulemaking to affect change, the director need not even seek anyone else's counsel.

As George Mason School of Law professor and Mercatus senior scholar Todd Zywicki has explained, the CFPB's single-director structure is atypical:

> Although single individuals head many departments and agencies, most (such as cabinet secretaries) serve at the pleasure of the president and are removable by the same. In contrast, multimember commissions, whose members serve for fixed terms and are removable only for cause, typically head independent agencies. In the rare instances in which a single director, such as the Comptroller of the Currency, serves as the head of an agency with formal de jure protection from removal, it appears that as a de facto matter, such heads serve at the pleasure of the president.

20. *See, e.g.*, John D. Graham & James Broughel, *Confronting the Problem of Stealth Regulation* (Mercatus Ctr. at Geo. Mason U., Mercatus on Policy, 2015), *available at* http://mercatus.org/sites/default/files/Graham-Stealth-Regulations-MOP.pdf; Hester Peirce, *Regulating Through the Back Door at the Commodity Futures Trading Commission* (Mercatus Ctr. at Geo. Mason U., Working Paper, 2014), *available at* http://mercatus.org/publication/regulating-through-back-door-commodity-futures-trading-commission.
21. CFPB, CFPB Bulletin 2013-02: Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act (Mar. 21, 2013), *available at* http://www.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf.
22. Dodd-Frank § 1026 [12 U.S.C. § 5519 (2013)].
23. For a discussion of the legal and practical implications of the guidance, *see* Morrison Foerster, CFPB Fair Lending Guidance for Indirect Auto Lenders—It's Not Just About Cars (June 4, 2013), *available at* media.mofo.com/files/Uploads/Images/130604-CFPB-Auto-Lenders.pdf.
24. *See, e.g.*, CFPB, *supra note* 21, at 4-5 (noting that "indirect auto lenders that retain dealer markup and compensation policies *may wish* to address the fair lending risks of such policies by implementing systems for monitoring and corrective action") (emphasis added).

> Moreover, these single-director agencies usually do not hold broad policymaking responsibilities but instead are involved in expertise-based regulation, such as supervising the safety and soundness of banks or the scientific process of the Food and Drug Administration.[25]

Consistent with this standard approach, early advocates of a consumer financial protection agency anticipated that it would have a commission structure.[26]

A commission structure would allow rules and enforcement actions to reflect multiple viewpoints. The commission could deliberate different theories of consumer protection publicly. By incorporating different views, the commission structure would not suffer from the dramatic director-to-director policy swings that are likely to characterize the agency in its current form. H.R. 1266, by introducing the commission structure, could bring long-term consistency, predictability, and balance to the CFPB.

H.R. 1660, H.R. 2091, H.R. 2213, AND H.R. 2643: REGULATORY STREAMLINING

Financial regulation needs periodic updating to reflect changing conditions on the ground for regulators and regulated entities. The remaining set of legislative proposals makes these types of adjustments. H.R. 2643 would make it easier for state financial regulators to access criminal records housed at the Federal Bureau of Investigation. Similarly, H.R. 2091 would enable state child support enforcement officials to obtain consumer credit reports without giving the consumer the standard 10 days' notice—a requirement that enables delinquent parents to game the system. H.R. 1660, which would enable federal savings associations to engage in the same activities as national banks without shifting to a national bank charter, is consistent with regulatory streamlining efforts being undertaken by the Office of the Comptroller of the Currency in the Economic Growth and Regulatory Paperwork Reduction Act process. Finally, H.R. 2213 would recognize widespread lender implementation difficulties in connection with new CFPB mortgage disclosure rules by allowing lenders additional time to comply.[27]

CONCLUSION

This package of legislative proposals affords an opportunity to revisit the existing regulatory framework. The proposed changes include measures that could encourage financial institutions to take responsibility for their lending decisions, could limit bank regulators' discretion by enhancing regulatory accountability, and could streamline the regulatory framework to enable it to operate more effectively.

25. Todd J. Zywicki, *The Consumer Financial Protection Bureau: Savior or Menace*, 81 Geo. Wash. L. Rev. 856, 873–74 (2013) (footnotes omitted).
26. *See, e.g.*, Dep't of the Treasury, Financial Regulatory Reform: A New Foundation: Rebuilding Financial Supervision and Regulation 58 (2009) ("The [Consumer Financial Protection Agency] will have a Director and a Board. The Board should represent a diverse set of viewpoints and experiences."), http://www.treasury.gov/initiatives/wsr/Documents/FinalReport_web.pdf; Consumer Financial Protection Agency Act of 2009, H.R. 3129, 111th Cong., 1st Sess. § 112 (2009) (proposing a board structure for the proposed Consumer Financial Protection Agency). *See also* Oren Bar-Gill & Elizabeth Warren, *Making Credit Safer*, 157 U. Pa. L. Rev. 100–01 (2008) ("propos[ing] the creation of a new federal regulator—a Financial Product Safety Commission or a new consumer credit division within an existing agency (the FRB or FTC)") (emphasis added); Elizabeth Warren, *Unsafe at Any Rate*, Democracy: A Journal of Ideas (Summer 2007), *available at* http://www.democracyjournal.org/5/6528.php?page=all (advocating a "Financial Product Safety Commission" modeled on—and perhaps located within—the Consumer Product Safety Commission).
27. *See* Trey Garrison, *It's Official: CFPB Will Grant Grace Period on TRID Enforcement: Open-Ended Grace Period Protects Institutions Acting in "Good Faith"*, HousingWire.com (June 3, 2015), *available at* http://www.housingwire.com/articles/34081-its-official-cfpb-will-grant-grace-period-on-trid-enforcement (reporting surveys demonstrating widespread implementation delays).

Statement of the U.S. Chamber of Commerce

ON: Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence

TO: House Committee on Financial Services, Subcommittee on Financial Institutions and Consumer Credit

BY: Jess Sharp, Managing Director of the Center for Capital Markets Competitiveness

DATE: June 11, 2015

1615 H Street NW | Washington, DC | 20062

The U.S. Chamber of Commerce is the world's largest business federation representing the interests of more than 3 million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Chamber is dedicated to promoting, protecting, and defending America's free enterprise system.

More than 96 percent of Chamber member companies have fewer than 100 employees, and many of the nation's largest companies are also active members. We are therefore cognizant not only of the challenges facing smaller businesses, but also those facing the business community at large.

Besides representing a cross-section of the American business community with respect to the number of employees, major classifications of American business—e.g., manufacturing, retailing, services, construction, wholesalers, and finance—are represented. The Chamber has membership in all 50 states.

The Chamber's international reach is substantial as well. We believe that global interdependence provides opportunities, not threats. In addition to the American Chambers of Commerce abroad, an increasing number of our members engage in the export and import of both goods and services and have ongoing investment activities. The Chamber favors strengthened international competitiveness and opposes artificial U.S. and foreign barriers to international business.

Positions on issues are developed by Chamber members serving on committees, subcommittees, councils, and task forces. Nearly 1,900 businesspeople participate in this process.

Chairman Neugebauer, Ranking Member Clay, and Members of the Committee, my name is Jess Sharp and I am managing director for the Center for Capital Markets Competitiveness at the U.S. Chamber of Commerce. Thank you for the opportunity to testify before the Subcommittee today on behalf of the hundreds of thousands of businesses that the Chamber represents.

The bills under consideration by the Subcommittee today reflect the broad range of its efforts to make financial markets stronger and more competitive to meet the needs of the American consumer. Today, I will discuss one goal on which the Subcommittee rightly continues to focus: ensuring that consumers have access to the products they want through safe and competitive marketplaces.

The Chamber firmly supports sound consumer protection that deters and punishes financial fraud and predation and ensures that consumers receive clear, concise, and accurate disclosures about financial products. Legitimate businesses, as well as consumers, benefit from a marketplace free of fraud and other deceptive and predatory practices. But consumer protection, like every other government function, must be carried out in a consistent, fair, and transparent manner. Unfortunately, the Consumer Financial Protection Bureau (the "Bureau") too often has failed to maintain those basic standards.

Every day, I hear from companies big and small, banks and non-banks that struggle to understand the Bureau's directives, or that offer a product that the Bureau appears to have targeted for elimination either through regulation or enforcement. The experiences of these businesses have emphasized five simple principles:

- Companies and consumers benefit from clear rules of the road;
- Rationing credit does not protect consumers;
- The Bureau must respect clear limits on its authority;
- The Bureau must be transparent to consumers and Congress; and
- If everyone is in charge, no one is in charge.

These principles likewise can inform Congress' oversight of the Bureau and its legislative response. Indeed, many of the proposals under consideration at today's hearing would help address the problems businesses wrestle with every day in the consumer financial services marketplace.

I want to first draw attention to H.R. 1266, the Chairman's Financial Products Safety Commission Act of 2015. That bill would bring the CFPB in line with other independent agencies by codifying the commission structure that was originally proposed by this Committee. The Chamber strongly supports this legislation and believes that by incorporating the controls and oversight that apply to other federal regulatory agencies, Congress will ensure far greater stability over the long-term for those who provide and rely on consumer credit. In addition, the inclusion of a variety of viewpoints and a more structured decision making process will help to better inform complex policymaking and cure some of the transparency and jurisdictional issues that have emerged in the Bureau's development, many of which are described in more detail in my testimony.

* * * * *

1. Companies and Consumers Benefit from Clear Rules of the Road

Businesses work hard to comply with applicable government regulations, including through substantial investments in their compliance systems. These efforts are frustrated, however, when government agencies prioritize getting the job done quickly over getting the job done right.

Indirect Auto: As this Subcommittee knows, the Bureau has created enormous uncertainty in the indirect auto lending market by issuing guidance without notice and comment and undertaking enforcement and supervisory actions based upon post hoc statistical models—but has failed to share its analysis and assumptions, thus depriving lenders of the ability to anticipate the Bureau's analysis and to comply accordingly.

- H.R. 1737, the Reforming CFPB Indirect Auto Financing Guidance Act, would bring much-needed transparency to the indirect auto lending market. It would require the Bureau to put any guidance regarding indirect auto lending on a solid footing by eliminating any legal effect of the Bureau's 2013 guidance, and then imposing reasonable conditions on any future guidance on this topic. H.R. 1737 thereby would help bring clear rules of the road to the indirect auto lending market.

Integrated Mortgage Disclosure Rule: The Bureau's TILA-RESPA Integrated Disclosure (TRID) rule will significantly change the documentation used in a mortgage closing. These substantial changes create significant compliance challenges, as financial services companies have yet to develop experience with its requirements or to work through the questions that inevitably arise when first seeking to comply with a new regulation. As a result, numerous stakeholders have asked the Bureau to establish a grace period in which they will not be punished for their good faith

compliance efforts. The Bureau so far has declined to do so. Rather, it has indicated that it will be "sensitive" to company compliance efforts in its enforcement activities.

- H.R. 2213 would provide a very short safe-harbor period with respect to the new TRID rule until January 1, 2016 (the TRID rule has an August 1, 2015, compliance date). It thereby would allow companies and the Bureau to understand the rule in context and to work out the inevitable remaining ambiguities.

Abusiveness: As this Subcommittee is well-aware, the Bureau has not explained the contours of "abusiveness" liability through a public notice and comment process. Instead, the Bureau has continued to force financial services companies to try to discern the meaning of "abusiveness" from enforcement actions brought by the Bureau. It is hard to overstate the confusion and concern that this preference for regulation of "abusiveness" by enforcement has caused.

Service Provider Liability: The Bureau has repeated its preference for regulation by enforcement with respect to companies' liability for the acts of their service providers. The Bureau only has provided vague guidance on this topic rather than issuing an interpretive rule or otherwise undertaking a public notice and comment process.

No-Action Letter Policy: Numerous industry stakeholders have called upon the Bureau to adopt a process for clarifying controlling legal requirements through advisory opinions and no-action letters. The Bureau has not adopted any meaningful version of such a process, however. Instead, it has crafted a no-action letter policy that is so constrained that it will be of no meaningful use to financial services companies. By the Bureau's own calculation, it will only be used one to three times a year.[1] The combined effect of the confusion surrounding "abusiveness" and the lack of a functional process for companies to consult and get written feedback is certain to inhibit innovation in financial services.

2. Rationing Credit Does Not Protect Consumers

Consumers must be protected, but they must also be served. In creating the Bureau, Congress sought to empower informed consumers to pick the products that are right for them. The Bureau likewise should focus on facilitating informed consumer choice in the credit card market rather than imposing new restrictions that reduce access to credit.

[1] *See* CFPB, Policy on No-Action Letters, 79 Fed. Reg. 62118, 62119 (Oct. 16, 2014).

Qualified Mortgage Rule: The Bureau drew a bright line on mortgage eligibility in its Qualified Mortgage (QM) rule. In doing so, it effectively adopted a one-size-fits-all approach that the market is still grappling with. This rule thus may benefit some consumers who will avoid getting a mortgage they clearly cannot afford, but will also deprive many worthy, responsible borrowers of the dream of homeownership. Compounding these problems, numerous ambiguities in the rule have made compliance even harder for lenders, particularly community banks.

- H.R. 1210, the Portfolio Lending and Mortgage Access Act, would provide regulatory certainty to lenders—particularly small lenders such as community banks and credit unions—by allowing loans held on the books of a lender to be eligible for the safe harbor provided under the QM rule. This provision would facilitate a robust underwriting process by lenders and would also help qualified borrowers obtain mortgages by alleviating some of the uncertainty that currently exists under the QM rule.

Military Lending Act: The Bureau has partnered with the Department of Defense on this rulemaking, which would subject all manner of consumer credit extended to all Americans to rules that were intended to protect service members from predatory lending. While the Chamber supports strong protections for our service members, this proposal takes a broad and unworkable approach to a narrow problem. For example, the proposed rule would require every application for a credit card by any American consumer to be checked against a military database that has proven unreliable. The inevitable result will be delay or denial of credit to consumers to whom the Act should not apply. The Bureau should work with the Defense Department to revise this proposal, including by ensuring that the rule does not go into effect until the database is reliable and may be accessed in real time by credit card issuers and other businesses that extend consumer credit.

Payday Lending: The Bureau has proposed a rule that it acknowledges will put many payday lenders out of business. The Bureau separately has made clear its concerns about deposit advance products and overdraft protections. Thus, if the payday lending rule goes forward as proposed, many consumers will find themselves without access to credit at their time of greatest need. To-date, the Bureau has not explained what consumers should do in that event.

3. The Bureau Must Be Transparent to Consumers and Congress

The Bureau repeatedly has declared its commitment to transparency. Its track record, however, has been mixed.

Supervision: The Bureau's failure to close supervisory examinations in a timely manner has been the subject of significant congressional oversight as well as study by the Bureau's Inspector General.[2] Until this problem is fixed, the Bureau will continue to leave companies uncertain of their compliance status.

- H.R. 1941, the Financial Institutions Examination Fairness and Reform Act, would help eliminate these ambiguities and delays by requiring better communications between bank examiners, including the Bureau, and financial institutions. It would also create an Office of Independent Examination Review ("OIER") within the Federal Financial Institutions Examination Council that would hear appeals of material supervisory determinations contained in a final examination.

  The Chamber supports the ability of an institution to appeal an examination to an independent body and has supported similar efforts to empower an ombudsman with similar rights of appeal. This would help to create due process and streamline a process to allow exams to be reviewed, mistakes corrected, or for issues discovered in an exam to be dealt with in a more efficient manner. H.R. 1941 would help Main Street businesses access the liquidity and capital resources needed to grow in a timely and efficient manner.

Arbitration: The Bureau pursued its congressionally mandated task of studying arbitration agreements without engaging the public in a meaningful way. The Bureau issued only one Request for Information—in April 2012—which sought public comment on the topics that it should address in the arbitration study. The Bureau never informed the public of the topics it had decided to study and sought public comment on them—even though a number of commenters suggested that the Bureau utilize that procedure. The Bureau never convened public roundtable discussions on key issues, as many other agencies routinely do. And the Bureau never sought public input on its tentative findings. The Bureau now has issued its study. We have joined other stakeholders in asking that the Bureau finally provide a meaningful opportunity to participate in its rulemaking process.

Data Collection and the Paperwork Reduction Act: Members of this Subcommittee repeatedly have raised concerns about the Bureau's harvesting of consumers' financial data. Likewise, on September 24, 2014, the Government Accountability Office

[2] *See, e.g.*, Mark Bialek, Inspector General, Memorandum: The OIG's List of Major Management Challenges for the CFPB (Sept. 30, 2014) (listing improving the efficiency of supervisory process as the Bureau's number one management challenge), *available at* http://oig.federalreserve.gov/reports/cfpb-management-challenges-sept2014.pdf.

released a report that analyzed the Bureau's data collection practices.[3] That report explained that the Bureau and the OCC had agreed to collect credit from nine financial institutions each (the limit prior to triggering the obligations of the Paperwork Reduction Act) and then to share that information with each other. In response to this apparent violation of at least the spirit of the Paperwork Reduction Act, the OCC gave notice in the Federal Register and solicited comment on its proposal to continue this information collection. According to the GAO, the Bureau, in contrast, committed only to "consult again with [the Office of Management and Budget] about whether [Paperwork Reduction Act] requirements apply to the Bureau's collection of certain credit card data" and to "document this further consultation." To our knowledge, the Bureau has not undertaken any further public engagement on this topic.

4. The Bureau Must Respect Clear Limits on its Authority

The Bureau should adhere scrupulously to the limits of its substantial authority in all its work. Unfortunately, it has failed to do so on multiple occasions.

- *Indirect Auto Lending*: Congress clearly chose to exclude auto dealers from the Bureau's authority. As this Subcommittee knows, however, the Bureau has not respected this clear limit on its authority.

- *Suitability Requirements*: When this Committee considered its version of the Dodd-Frank Act, it specifically decided *not* to allow the Bureau to require companies to determine whether a product was "suitable" for a particular consumer. The Bureau, however, has ignored this decision and has used its various authorities to stop companies from offering certain products to certain consumers—or to punish those companies that do offer such products. For example, it has pursued litigation against for-profit colleges on the apparent theory that the education provided by those colleges does not justify the debt that certain students take on.

5. If Everyone is in Charge, No One is in Charge

Confusion reigns when multiple regulatory agencies assert authority over the same subject: if everyone is in charge, no one is in charge. The Bureau should recognize—and avoid—the risks to consumers that such confusion causes.

[3] *See* GAO, Consumer Financial Protection Bureau: Some Privacy and Security Procedures for Data Collections Should Continue Being Enhanced (Sept. 2014) ("GAO Report"), *available at* http://www.gao.gov/assets/670/666000.pdf.

- *Indirect Auto Lending*: As mentioned above, Congress chose to exclude auto dealers from the Bureau's authority, but that has not stopped the Bureau from attempting to regulate these businesses through indirect means. The Bureau has attempted to use pressure on lenders to change dealers' business practices even when sister agencies could take action against dealers directly (but have not done so). Going forward, the Bureau should focus on collaborating with its fellow agencies and agreeing on a coherent regulatory strategy.

- *Telecom*: Not satisfied with its extensive authority within the consumer financial services market, the Bureau has taken on the role of telecom regulator, bringing enforcement actions against both Sprint and Verizon wireless companies. In doing so, the Bureau injected itself into a field where the FTC and the FCC already had asserted authority.

- *Housing*: Too many regulators, including the Bureau, have a stake in regulating the housing market. These regulators do not seem to be able to get on the same page about whether we need more or less lending. They variously encourage lending broadly to enable more consumers to share the dream of home ownership but also attack lenders who lend to consumers who subsequently default. This regulatory chaos is bad for the market and bad for consumers.

- *FDIC Insurance*: The Bureau should not use the Consumer Financial Protection Act to enforce the organizing statutes of other regulators. While that might sound obvious, the Bureau recently alleged that a subprime credit card issuer—Continental Finance Company—engaged in deceptive practices by misrepresenting that certain funds used to secure credit lines were FDIC insured. The Bureau thus transformed a violation of the Federal Deposit Insurance Act[4] into a violation of the Consumer Financial Protection Act.

* * * * *

The Chamber also supports a number of other bills under consideration by the Committee that would increase the transparency of other banking regulators, provide regulatory relief to community banks, and limit the ability of regulators to cut off lawful businesses from the banking system.

[4] *See* 12 U.S.C. § 1828(a)(4)(B) (prohibiting any person from knowingly misrepresenting status as an FDIC insured entity).

H.R. - 2287 NCUA Budget Transparency Act

The Chamber supports the National Credit Union Transparency Act introduced by Mr. Mulvaney. Credit unions play an important role in the diverse capital markets that have made the United States economy the most productive in the world. Having effective regulators creates the level playing field needed for efficient capital markets to operate. Accordingly, it is important for any regulator to develop a strategic plan and have the managerial apparatus needed to implement it in a constructive and positive manner. H.R. 2287 would assist the National Credit Union Administration to create such a vision, have stakeholders provide input, and then to execute it. H.R. 2287 would help the National Credit Union Administration to fulfill this role and allow credit unions to operate with appropriate levels of oversight and transparency.

H.R. - 1553 Small Business Exam Cycle Reform Act of 2015

Small financial institutions are critical providers of credit for individuals and small businesses all across the United States, and the Chamber strongly supports measures that would provide them with regulatory relief. H.R. 1553 simply allows more of our small banks to be examined on an 18-month cycle, reducing the cost and burden of supervision, and allowing them to redirect those resources into serving their communities.

H.R. - 766 Financial Institution Customer Protection Act of 2015

The Chamber strongly supports H.R. 766, legislation to establish clear standards that the Federal banking agencies must abide by when using their leverage as prudential regulators to effectively shut down lawful businesses by denying them banking services—a program called Operation Chokepoint.

Government agencies have the tools to root out fraud, predation, and even national security threats, and the Chamber supports their efforts to do so, but under Operation Chokepoint government officials strongly discourage financial institutions from providing banking services to entire categories of lawful businesses and industries that are lawful, but disfavored by these agencies, based on "reputational risk." This has left banks with little choice but to terminate longstanding relationships with customers because of explicit or implicit threats from their regulator or the DOJ.

Markets function best when there are clear rules, a level playing field, and targeted enforcement. Operation Chokepoint is an end run around each of these

principles, and H.R. 766 would ensure that the government's power to terminate banking relationships is used only when there is a material reason for doing so.

* * * * *

Thank you again for the opportunity to testify before the Subcommittee today. The Chamber looks forward to working with Congress as these legislative proposals move forward. I am happy to answer any questions you may have.

June 10, 2015

Statement for the Record

On behalf of the

American Bankers Association

before the

Committee on Financial Services

United States House of Representatives

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Chairman Hensarling, Ranking Member Waters, and members of the Committee, the American Bankers Association (ABA) appreciates the opportunity to comment on legislation that will help improve the ability of banks throughout the nation to meet our customers' and communities' needs. This is not a new subject, yet the imperative to do something grows every day.

The ABA is the voice of the nation's $14 trillion banking industry, which is composed of small, mid-size, regional and large banks that together employ more than 2 million people, safeguard $11 trillion in deposits and extend more than $8 trillion in loans.

Community banks are resilient. They have found ways to meet their customers' needs despite the ups and downs of the economy. Each and every bank in this country helps fuel our economic system. Each has a direct impact on job creation, economic growth and prosperity. The credit cycle that banks facilitate is simple: customer deposits provide funding to make loans. These loans allow customers of all kinds—businesses, individuals, governments and non-profits—to invest in their hometown and across the globe. This stimulates economic activity, new jobs, and income which re-enters the system as deposits and continues the virtuous cycle.

This credit cycle does not exist in a vacuum. Regulation shapes the way banks do business and can help or hinder the smooth functioning of the credit cycle. Bank regulatory changes—through each and every law and regulation, court case and legal settlement—directly affect the cost of providing banking products and services to customers. Even small changes can have a big impact on bank customers by reducing credit availability, raising costs and driving consolidation in the industry. Everyone who uses banking products or services is touched by changes in bank regulation.

Community banks have always prided themselves on being flexible to meet the unique circumstances of their customers. But inflexible rules, regulatory risk, and potential law suits have led to fewer loans, hurting customers and their communities. This is why it is imperative that

Congress take steps to ensure and enhance the banking industry's ability to facilitate job creation and economic growth through the credit cycle.

The time to address these issues is now before it becomes impossible to reverse the negative impacts. The fact remains that there are 1,200 fewer community banks today than there were 5 years ago—a trend that will continue until some rational changes are made that will provide some relief to America's hometown banks. When a bank disappears everyone is affected.

ABA would like to thank members of this committee for taking on these important issues. In particular, ABA would like to thank the representatives and express our strong support for the following legislation which will begin to reduce the regulatory burden felt by community banks and allow them to get back to serving their local communities:

- **Financial Institution Customer Protection Act (H.R. 766)** – Representative Blaine Luetkemeyer's bill will help banks serve customers that have been unfairly targeted by Operation Chokepoint.
- **Portfolio Lending and Mortgage Access Act (H.R. 1210)** – Representative Andy Barr's bill will ensure that banks can continue to make safe and sound mortgages and hold them in portfolio without undue liability.
- **Financial Product Safety Commission Act (H.R. 1266)** – Representative Randy Neugebauer's bill will establish a sustainable governing structure and ensure that Congress can better oversee the CFPB.
- **Small Business Exam Cycle Reform Act (H.R. 1553)** – Representative Scott Tipton's bill will expand the number of highly rated community banks eligible for an 18-month exam cycle.
- **Federal Saving Association Charter Flexibility Act (H.R. 1660)** – the bill introduced by Representatives Keith Rothfus and Jim Himes will give federal savings associations the flexibility to exercise national bank powers to better serve their communities under their current charters.
- **Financial Institutions Examination Fairness and Reform Act (H.R. 1941)** – the bill introduced by Representatives Lynn Westmoreland and Carolyn Maloney will address continuing problems and concerns about the consistency and quality of the bank examination process.
- **H.R. 2213** – The bill introduced by Representatives Steve Pearce and Brad Sherman will ensure that banks have adequate time to comply with TILA and RESPA Integrated Disclosures.

These bills are an important first step toward enabling banks to get back to serving their communities. Collectively they help: (1) remove impediments to serving customers; (2) improve access to home loans; and (3) ensure proper oversight of government agencies to prevent unintended consequences. The remainder of this statement details of the contributions of each of these important bills in the context of these three key goals.

I. Remove Impediments to Serving Customers

Rules and requirements surround every bank activity. When it works well, bank regulation helps ensure the safety and soundness of the overall banking system. When it does not, it constricts the natural cycle of facilitating credit, job growth and economic expansion. Finding the right balance is key to encouraging growth and prosperity as unnecessary regulatory requirements lead to inefficiencies and higher expenses which reduce resources devoted to lending and investment.

The key to changing the consolidation trend is to stop treating all banks as if they were the largest and most complex institutions. Financial regulation and examination should not be one-size-fits-all. All too often, regulation intended for the largest institutions becomes the standard that is applied to every bank—Basel III being the most egregious. Such an approach only layers on unnecessary requirements that add little to improve safety and soundness, but add much to the cost of providing services—a cost which customers ultimately bear. Instead, ABA has urged for years that a better approach to regulation is to tailor bank supervision to take into account the charter, business model, and scope of each bank's operations. This would ensure that regulations and the examination process add value for banks of all sizes and types.

By eliminating unnecessary impediments to the natural credit cycle, Congress can help stem the tide of community bank consolidation driven by these unnecessary impediments which negatively impacts every community across the United States.

Financial Institutions Examination Fairness and Reform Act (H.R. 1941)

Congress should ensure that regulation is tailored to a bank's business model. Time and again, bankers ask why the complex set of rules, reporting requirements, and testing that are imposed upon the largest most diverse and global institutions become the standard applied to their smaller bank.

Of course, the supervisory process should assure risk is identified and managed prudently. This risk assessment must be appropriate to the type of institution. In the aftermath of the financial crisis, the pendulum of bank examination has swung to the extreme—affecting banks of every size. Overbroad, complicated restrictions supplant prudent oversight. Inconsistent examinations hinder lending, increase costs, and create procedural roadblocks that undermine the development of new products and services to bank customers.

ABA supports the Financial Institutions Examination Fairness and Reform Act (H.R. 1941) introduced by Congressman Westmoreland and Congresswoman Maloney. This bill is an important step in removing impediments to serving customers. Although no single piece of legislation could remedy all concerns about the current supervisory environment, the following provisions are critical to improving the examination process:

- Require timely exam reports by the regulators (including the CFPB) and more information about the facts upon which the agency relied in making examination decisions.

- Ensure consistent treatment and clarity regarding how the regulatory agencies and their examiners treat loans with respect to nonaccrual, appraisal, classification, and capital issues.

- Create an interagency Independent Examination Review office within the Federal Financial Institutions Examination Council (FFIEC) to ensure the consistency and quality of all examinations, which create an avenue of accountability to assure that the examination process is applied in a manner appropriate to the charter, business model, and size and scale of each bank's operations, rather than in a one-size-fits-all way. The Independent Examination Review Director should have clear authority to take corrective action to remedy examination errors. Moreover, the Director can conduct confidential outreach to measure whether actions to address community bank concerns are actually achieving their intent.

- Provide for expedited appeals of examinations without fear of reprisals.

- Prohibit any regulatory retaliation against the bank, their service providers, and any institution-affiliated party as defined in the Federal Deposit Insurance Act. An agency

cannot delay or deny action that would benefit a bank or institution-affiliated party that is appealing an agency decision.

Small Bank Exam Cycle Reform Act (H.R. 1553)

ABA supports the Small Bank Exam Cycle Reform Act (H.R. 1553) introduced by Representative Tipton. This bill would expand the number of banks eligible for an 18-month exam cycle for highly rated community banks. This would reduce significantly the resources required to deal with yearly examinations by the regulators and would have no impact on safety and soundness. The Comptroller of the Currency, Thomas Curry, has publicly stated such a change would reduce burden on well-managed community institutions and would also allow the agencies to focus their efforts on institutions that may present supervisory concerns.

Federal Savings Association Charter Flexibility Act (H.R. 1660)

ABA supports the Federal Savings Association Charter Flexibility Act (H.R. 1660) introduced by Representatives Rothfus and Himes. This bill would implement a proposal offered by the Comptroller of the Currency to provide greater flexibility to both mutual and stock thrift institutions chartered under the Home Owners Loan Act.

The proposal adds a new section to the Home Owners Loan Act that would give federal savings associations the flexibility to exercise national bank powers without changing their charters. Because the OCC already supervises both charters, it has the experience and the expertise necessary to ensure that a federal savings association exercising this flexibility operates safely and soundly.

Increasingly, taxpaying federal savings associations seeking to engage in additional activities to serve their communities are unable to do so because they are constrained by the current limits in HOLA. Under existing law, a federal savings association must convert to a bank charter to implement a strategic decision to engage in commercial or consumer lending to a greater extent than is permitted by HOLA. However, particularly for smaller institutions, charter conversions can be time-consuming and burdensome. Federal mutual savings associations face especially hard choices as they must convert to a stock form of organization before they can convert their

charter. H.R. 1660 would provide a more efficient, less expensive and less intrusive way for these institutions to adapt and change to meet the needs of their customers and communities

II. Improve Access to Home Loans

The mortgage market touches the lives of nearly every American household. Banks help individual consumers achieve the lifelong goal of homeownership by giving them access to the funding they need. Without home loans most Americans would not be able to purchase a home.

Banks are a major source of mortgage loans—holding more than $2 trillion in one-to-four family home loans on their books and originating others under government guarantees. In addition, banks support the housing industry with construction and development loans, and homeowners with home equity lines of credit. These critical services of banks result in more income and jobs in communities, along with a larger tax base for local governments.

It is painfully clear that new regulatory requirements have restrained mortgage lending and have made it particularly difficult for first-time homebuyers to obtain a home loan. The complex and liability-laden maze of compliance has made home loan origination more difficult, especially for borrowers with little or weak credit history. Over-regulation of the mortgage market has reduced credit available to bank customers, raised the cost of services, and limited bank products. The result has been a housing market still struggling to gain momentum.

Congress can help reduce needless impediments to mortgage lending that have constrained the banking industry's ability to help first-time homebuyers and other borrowers which has dampened the growth of prosperity across the nation's communities. For example, Congress should:

<u>Portfolio Lending and Mortgage Access Act:</u>

The Dodd-Frank Act (DFA) is overly restrictive in its categorization of permissible mortgage loans and this is having a detrimental impact on the market and consumer access to credit. In fact, the Consumer Financial Protection Bureau (CFPB) has been forced to delay implementation of some aspects of the rule which would eliminate balloon loans. These loans, which are in virtually all cases held in portfolio, are a useful and in-demand product for many customers, particularly those in rural areas seeking smaller dollar loans and those that do not meet secondary market eligibility requirements. It helps banks manage interest rate risk, and

without tools like this some borrowers would not have access to mortgage loans at all. While the bureau has recently proposed expanded exemptions for smaller lenders serving rural and underserved areas, more relief is needed for lenders and borrowers in all areas of the country. ABA is thankful for the CFPB's work to address this issue, but legislation is needed for a real fix.

ABA supports the Portfolio Lending and Mortgage Access Act (H.R. 1113) introduced by Representative Barr. This bill would deem ***any*** loan made by an insured depository and held in that lender's portfolio as compliant with the Qualified Mortgage rule under the DFA (so long as the loan is not sold). The Qualified Mortgage (QM) label is given to loans which can be shown to meet the qualifications of the Ability to Repay (ATR) provisions of DFA. Loans held in portfolio are, by their very nature, loans which can be repaid because the bank takes ***all*** the risk that the loan might default. A bank would not stay in business very long if it made and held loans on their books that cannot be repaid. Banks are willing to take on the credit risks of these loans – it is the legal risks imposed by excessive regulation and penalties that are preventing them from making non QM loans. The approach taken in this bill is a common sense method that allows banks to make a loan so long as it has been properly underwritten without subjecting the loan to excessive ATR/QM qualifications and liabilities.

Provide a Hold-Harmless Period for TILA RESPA Integrated Disclosures:

ABA has concerns over the pending implementation of the Truth in Lending and Real Estate Settlement Procedures Act Integrated Disclosures, or TRID as this project has become known. Although intended to simplify the disclosure process, if not implemented properly, TRID could add significant complications that end up costing consumers.

These rules are scheduled to go into effect on August 1 this year. There are wide-reaching market implications and a tremendous amount of work banks must undertake to comply with these rules. Between now and then, banks must fully review all of the final rules; implement new systems, processes and forms; train staff; and test these changes for quality assurance before bringing them online. We must get this right, for the sake of our customers, our banks' reputations, and to promote the recovery of the housing market.

Regulatory implementation is complicated by the fact that most banks—and particularly smaller community banks—rely on vendors for regulatory compliance needs and the

accompanying software updates and system upgrades. For purposes of the current TRID rule, an alarming number of banks report their vendors are not yet ready to provide the necessary updates to individual institutions.

An ABA survey found that an overwhelming 74% of banks are using a vendor or consultants to assist with TRID implementation; however, only 2% of the compliance systems had been delivered by the month of April (when the survey closed), and a startling 79% of our banks could not verify a precise delivery date, or were told that they would not receive systems before June. In fact, 21% of responding banks were explicitly informed by their vendor that their systems will not ready until well into June and even July.

ABA supports H.R. 2213 introduced by Representatives Pearce and Sherman which will provide a reasonable hold-harmless period through the end of the year. A hold-harmless period allows the Bureau to work with industry to gather data about implementation and provide written guidance to address common industry implementation hurdles that emerge between now and the end of the year. Without more clarity, the result is likely to leave homebuyers with less flexibility to buy and close on a home on their terms and potentially fewer companies with which to work. Although CFPB Director Cordray announced on June 3rd that the bureau would not be aggressive in enforcement for those making a good faith effort to comply, his statements carry no real legal weight and lacks any reliable metrics to measure good faith efforts at compliance. Lacking these, H.R. 2213 is needed to provide certainty and keep industry from facing delays and confusion during the busiest months for loan closings.

III. Ensure proper oversight of government agencies to prevent unintended consequences for consumers

The banking industry fully supports effective consumer protection. We believe that Americans are best served by a financially sound banking industry that safeguards customer deposits, lends those deposits responsibly, and processes payments efficiently. Effective controls are needed to ensure that measures designed to do not inadvertently limit credit due to unintended consequences.

Ensure proper oversight of the CFPB:

Fair service to our banking customers is inseparable from sound management of our banking business. Yet despite this axiom, the Dodd-Frank Act erected a Bureau that divides consumer protection regulation from safety and soundness supervision. The Bureau is accountable to the fundamentals of safe and sound operation, to the gaps in regulating non-banks that motivated financial reform, and to the principles of consistent regulatory standards consistently applied.

ABA supports H.R. 1266, introduced by Representative Neugebauer, which would replace the position of Director of the CFPB with a bi-partisan 5-member commission, similar to other financial regulatory agencies. ABA has long supported the commission concept and believes that a commission structure is appropriate to address the extremely broad authority of the Bureau's Director. We believe that a commission would broaden the perspective on any rulemaking and enforcement activity of the Bureau, and it would provide needed balance and appropriate checks in the exercise of the Bureau's authority.

We urge Congress to require the commission to include members with consumer finance business experience and direct safety and soundness regulatory expertise. We believe this expertise provides an important and necessary perspective as standards are set and enforcement activities are undertaken.

End Operation Choke Point:

One issue that is of particular importance is the Department of Justice (DOJ) program Operation Choke Point. This program is requiring banks to act as policemen and judges, holding them responsible for the actions of their customers without due legal process. Banks must shut down the accounts of customers that DOJ suspects to be illegal or unsavory, often with no formal court order or legal proceeding. Bankers cannot be guarantors of the lawful or moral nature of their customer's operations—they have neither the compliance capacity, the financial capacity, nor we believe the legal obligation to take on that assurance. However, the risk of regulatory or enforcement retribution is a potent deterrent against banking any customer that the government decides is unworthy of payment system access—even though the government itself does not take direct action in court to prove its case against the targeted customer.

The DOJ has initiated Operation Choke Point that starts with the premise that businesses of any type cannot effectively operate without access to banking services. DOJ pursues banks to shut down accounts of merchants targeted by the DOJ without formal enforcement action or even charges having been brought against these merchants. Thus, in the absence of any court order or other legal enforcement proceeding against the actual fraudsters, the program targets the bank for facilitating transactions of a customer.

DOJ identifies the banks to investigate using the very Suspicious Activity Reports (SAR) the banking industry has filed in fulfillment of its role to report suspicious activity. Rather than use such leads to investigate, determine culpability and directly prosecute the perpetrators, the DOJ has instead turned the industry's reporting efforts onto the reporters themselves.

Taken together the banking agencies and the Department of Justice are placing on banks the burden to differentiate between proper or improper conduct of their customers, and to close "high-risk" accounts or face unacceptable levels of regulatory criticism or retribution. This ratcheting up regulatory and reputation risk forces banks to de-risk their business lines by terminating customers whose operations may be entirely legal but who have risky profiles. This regulatory environment undermines our industry's efforts to support local businesses and grow our national economy. It also undermines customers whose economic viability is severed by government blacklisting without recourse to judicial due process.

Our concern with Operation Choke Point is not its goal of fighting financial fraud, but rather the policy premise upon which the initiative is based, the faulty legal foundation it asserts, and the manner in which it is applied. We believe that it is time to renounce Operation Choke Point and recalibrate the BSA/AML regime to restore the intended division of responsibility between the financial industry's reporting role and law enforcement's role of prosecuting the perpetrators of fraud and financial crime directly.

ABA supports the Financial Institution Customer Protection Act (H.R. 766) introduced by Representative Luetkemeyer. This bill would prevent regulators from requesting that banks terminate customer accounts unless the agency has material reason to do so other than reputational risk. This will allow banks to continue to bank legal customers that may have inadvertently been captured by Operation Choke Point.

Conclusion

Community banks have been the backbone of hometowns across America. Our presence in small towns and large cities everywhere means we have a personal stake in the economic growth, health, and vitality of nearly every community. A bank's presence is a symbol of hope, a vote of confidence in a town's future. When a bank sets down roots, communities thrive. The measures discussed above are an important first step. We thank the Committee for their continued diligence in addressing regulatory concerns and we urge Congress to act now and pass these pieces of legislation to help turn the tide of community bank consolidation and protect communities from losing a key partner supporting economic growth.

STATEMENT OF THE CONFERENCE OF STATE BANK SUPERVISORS
On
"EXAMINING LEGISLATIVE PROPOSALS TO PRESERVE CONSUMER CHOICE AND FINANCIAL INDEPENDENCE"

Before the
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT SUBCOMMITTEE
UNITED STATES HOUSE OF REPRESENTATIVES

Thursday, June 11, 2:00 pm
2128 Rayburn House Office Building

INTRODUCTION

The Conference of State Bank Supervisors (CSBS) thanks Chairman Neugebauer, Ranking Member Clay, and the distinguished Members of the Subcommittee for the opportunity to submit a statement for the record for the hearing titled "Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence."

CSBS is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators charter and supervise approximately 5,000 insured depository institutions, and state regulators also supervise a wide variety of non-bank financial services providers, including more than 16,000 mortgage companies and nearly 132,000 individual mortgage loan originators (MLOs),[1] as well as money transmitters, check cashers, and consumer finance lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy. CSBS also provides training to state banking and financial regulators and represents its members before Congress and the federal financial regulatory agencies.

Thank you for holding this important hearing to consider issues related to consumer choice and regulatory efficiency.

In this statement, CSBS will comment on H.R. 2643, the State Licensing Efficiency Act of 2015; H.R. 1553, the Small Business Exam Cycle Reform Act of 2015; and H.R. 1210, the Portfolio Lending and Mortgage Choice Act.

[1] Source: CSBS-AARMR Nationwide Multi-State Licensing System and Registry (NMLS), as of December 31, 2014.

H.R. 2643, THE STATE LICENSING EFFICIENCY ACT OF 2015

CSBS strongly supports H.R. 2643, bipartisan legislation that would allow for more efficient background check processing for state regulators using the Nationwide Multistate Licensing System and Registry (NMLS or the System).

About NMLS

Almost 10 years ago, in the lead up to the financial crisis, state regulators recognized the need to oversee the mortgage industry more comprehensively and efficiently. State regulators also wanted to streamline the licensing process across state lines. For instance, regulators from neighboring states such as Texas and Oklahoma should be able to seamlessly share information and communicate regarding a financial services provider licensed in both states. Similarly, a financial services provider should enjoy a straightforward licensing process between Texas, Oklahoma, and all other states in which it is licensed to do business. Furthermore, state regulators wanted to ensure that a bad actor could not have his or her license revoked in one state, only to go set up shop in another.

To achieve this goal, the states collectively developed an electronic system for licensing, known as NMLS. After two years of development, state regulators launched NMLS on January 2, 2008. This web-based system, administered by the states through CSBS, allows state-licensed financial services providers to apply for, amend, update, or renew a license online for all participating state agencies using a single set of uniform applications.

NMLS gives regulators the ability to keep track of bad actors and provide responsible financial services professionals and companies with greater efficiency and consistency in the licensing process. NMLS enables an individual or company to easily apply for a license in one state or across multiple states using a uniform, electronic license application form. NMLS provides similar streamlining benefits for state regulators by providing back-office services. Through NMLS, states that license the same entity are able to share pertinent information and collaborate with colleagues across state lines regarding multi-state entities, thereby reducing duplicative efforts and costs and promoting more efficient supervisory processes at state regulatory agencies.

When Congress sought to pursue mortgage market reform in 2008, it recognized the benefit of state supervision and NMLS and codified the System into federal law through the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act). The SAFE Act required all residential mortgage loan originators (MLOs) be either licensed or registered through NMLS.

The SAFE Act also established a framework that clarified state and federal roles and a mechanism for state and federal coordination and information sharing. Under this state-federal cooperative structure, state regulators are given primary responsibility for implementing the law's requirements, with a federal agency serving as a backstop and arbiter of the SAFE Act. All 50 states, the District of Columbia, Puerto Rico, and the U.S. territories

acted quickly to enact laws to implement the mandates of the SAFE Act. The states responded in record time to implement the SAFE Act, quickly putting in place a uniform and seamless system of mortgage licensing and supervision across the nation.

NMLS also serves as a resource for consumers and promotes greater transparency concerning the companies by providing information to consumers through the NMLS Consumer Access website.[2] NMLS Consumer Access allows consumers to verify whether mortgage lenders and other financial services providers are in fact properly licensed or registered.

Expansion and Widespread Support of NMLS

NMLS was designed in a forward-thinking manner to provide functionality for all state licensing regimes. NMLS proved to be such a successful and integral regulatory tool in the mortgage licensing arena, state mortgage regulators have expanded its use to serve as a licensing system for other state-licensed, non-bank financial services providers. Starting in April 2012, state regulators began voluntarily using NMLS on this expanded basis to include licensees such as check cashers, debt collectors, money transmitters, and consumer finance lenders. As of year-end 2014, 34 state agencies were using NMLS to license companies engaged in money services businesses, debt, and consumer finance. In total, 61 state agencies currently manage 540 state license authorities through NMLS.

The expanded use of NMLS has streamlined the licensing process for both licensees and regulators. It enables licensees to manage their licenses for multiple states, while states are able to track the number of unique companies and individuals, as well as the number of licenses they hold in each state. As a system of record for state regulatory authorities and a central point of access for licensing, NMLS brings greater uniformity and transparency to these non-depository financial services industries while maintaining and strengthening the ability of state regulators to monitor these industries.

Non-bank financial services companies have also supported the efficiencies that NMLS provides. In a June 2012 House Financial Services Committee hearing on money services businesses, industry representatives testified that widespread adoption of NMLS "would eliminate duplication of effort and opportunities for error" and "urge[d] any changes at the federal level to accommodate and encourage its further development."[3] In another House Financial Services Committee hearing that same month, appraisers, money transmitters, and regulators alike testified to their interest in using NMLS as a licensing platform.[4]

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[2] http://www.nmlsconsumeraccess.org.

[3] Timothy P. Daly, Senior Vice President, Global Public Policy, The Western Union Company. Hearing before the Subcommittee on Financial Institutions and Consumer Credit of the Committee on Financial Services, U.S. House of Representatives, 112th Congress, Second Session, Serial No. 112-139, 49-50 (June 21, 2012). Available at http://financialservices.house.gov/uploadedfiles/hhrg-112-ba15-wstate-tdaly-20120621.pdf.

[4] Subcommittee on Insurance, Housing, and Community Opportunity: "Appraisal Oversight: The Regulatory Impact on Consumers and Businesses," Printed Hearing 112-140 (June 28, 2012). Available at http://financialservices.house.gov/calendar/eventsingle.aspx?EventID=300543.

Authority to Process Criminal Background Checks through NMLS

In the SAFE Act, Congress mandated that MLOs undergo fingerprint-based background checks as part of the licensing process. The Federal Bureau of Investigation (FBI) warehouses the most comprehensive and reliable database of criminal record information from both state and federal law enforcement agencies, and facilitates background checks. The process is simple: when an individual is required to undergo a background check, he or she submits fingerprints, which are then sent to the FBI. The FBI pulls the individual's criminal history, and then sends it back to the state via NMLS.

To make this process more efficient, the SAFE Act designated CSBS as a "channeler" – an approved company that acts as an intermediary in the fingerprinting and background check process – in the mortgage context. As a channeler, CSBS streamlines an otherwise lengthy process and makes it efficient. A potential MLO – whether she or he is seeking a license in one or 50 states – scans his or her fingerprints at just one location. The FBI generates that individual's criminal record and passes it to NMLS, which then directs the information to the relevant state licensing agency or agencies. Whereas a state wishing to conduct a criminal background check through traditional means may wait several weeks and sometimes even months for a response, NMLS communicates directly with the FBI and consistently receives the same results in just 24 hours or less. Also, regardless of how many jurisdictions an MLO is seeking licensure, he or she is able to authorize a single background check to satisfy multiple requirements.

As in the mortgage context, state law often requires background checks for licensees in other financial services industries. As state regulators expand their use of NMLS as a licensing system for these other industries, state regulators need this more efficient background check processing through NMLS. H.R. 2643 is a commonsense bill that would give state regulators the explicit authority to use NMLS to process background checks for non-depository financial services providers. By authorizing NMLS to process criminal background data for non-mortgage, non-depository financial services providers, H.R. 2643 allows state regulators to quickly and efficiently obtain background checks on license applicants. A more efficient licensing process reduces regulatory burden, allowing financial service providers to focus their time and effort on better serving their communities.

H.R. 1553, THE SMALL BUSINESS EXAM CYCLE REFORM ACT OF 2015

Federal law provides for an 18-month exam cycle for banks having $500 million or less in assets that are well capitalized, well managed, have a composite condition ratio of outstanding, and have no formal enforcement actions. H.R. 1553 proposes to raise the threshold to $1 billion. CSBS believes raising the threshold to $750 million or $1 billion would be a welcome step. Since the vast majority of institutions at or below the $1 billion asset threshold are community banks and do not pose the same risks as larger institutions, an 18-month exam cycle

for well-managed, well capitalized institutions is an effective way to right-size regulation of smaller institutions.

H.R. 1210, THE PORTFOLIO LENDING AND MORTGAGE CHOICE ACT

State regulators have long supported a flexible approach to underwriting for institutions that retain mortgages in portfolio. When community banks originate and retain mortgage loans, interests are inherently aligned between the borrower and the lender because the bank retains 100 percent of the risk of default. Institutions that portfolio mortgage loans have a greater incentive to ensure a borrower's ability to repay and fund the total cost of homeownership. And, when a consumer defaults, portfolio lenders are incentivized to work with the borrower to fix the problem. While the scale of large bank operations may require that underwriting be standardized to support a volume-driven business model, community banks are well-equipped to make case-by-case determinations of repayment ability for loans held in portfolio.

Yet, a nationwide community bank survey and community bank town hall meetings conducted in conjunction with the 2014 Community Banking in the 21st Century Research Conference[5] point to a problem: while many community banks' existing mortgage businesses are consistent with the Ability-to-Repay (ATR) and Qualified Mortgage (QM) requirements, community bankers report that the current regulation is creating an outsized burden.

It is the responsibility of state regulators to ensure community banks can offer flexible products to meet the needs of their local communities, and it is the responsibility of policymakers to create a legal and regulatory framework that permits flexibility where borrower and lender interests are aligned.

One solution that would tailor the requirement to the nature of community bank mortgage lending is to grant the QM liability safe harbor to all mortgage loans held in portfolio by a community bank. Congress explored this issue through hearings and CSBS-supported legislation during the 113th Congress. While broader in scope, H.R. 1210 also addresses this issue. We encourage this Congress to pursue solutions such as this to promote portfolio lending by community banks.

CONCLUSION

Locally based and locally accountable, state banking regulators continually strive for better ways to regulate the diverse system of financial services businesses that serve their communities and consumers. NMLS provides state regulators with an effective and efficient tool for increasing uniformity, reducing regulatory burden, enhancing consumer protection, and

[5] The Conference of State Bank Supervisors and the Federal Reserve System host annually the Community Banking in the 21st Century Research and Policy Conference. https://www.communitybanking.org/.

reducing fraud. H.R. 2643 recognizes the value of state supervision and provides state regulators with the best tools at their disposal.

CSBS also commends Congress for seeking out ways to right-size regulations for community banks, especially for those who are performing to a high standard and retaining mortgages in portfolio. CSBS remains prepared to work with Congress to enhance supervisory efficiency and appropriately right-size regulations.

Thank you for the opportunity to submit a statement for the record.

June 11, 2015

ICBA
INDEPENDENT COMMUNITY
BANKERS of AMERICA®

ICBA Supports Legislation to Improve Regulation of Community Banks and Help Customers

On behalf of the more than 6,000 community banks represented by ICBA, thank you for convening today's hearing entitled: "Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence." Many of the bills before the Committee today reflect provisions of ICBA's Plan for Prosperity community bank regulatory relief agenda. ICBA is pleased to submit this statement for the record and to note our support for the following bills:

The Financial Institutions Customer Protection Act (H.R. 766), introduced by Rep. Blaine Luetkemeyer, would help to curtail the abuses of Operation Choke Point. Among other provisions, H.R. 766 would provide that a banking regulator such as the Federal Deposit Insurance Corporation or the Federal Reserve would be prohibited from suggesting, requesting, or ordering a bank to terminate a customer relationship unless the regulator put the order in writing and specified a material reason for the action. This requirement would limit the opportunity for regulators to abuse their discretion and terminate long-standing banking relationships based on biased, unsubstantiated, and subjective notions of "reputational risk."

The Portfolio Lending and Mortgage Access Act (H.R. 1210), introduced by Rep. Andy Barr, would provide automatic QM status to any mortgage loan held in portfolio, including balloon payment loans. When a mortgage is held in portfolio, the lender holds 100 percent of the credit risk and has an overriding incentive to ensure the mortgage is safely underwritten and the borrower has the ability to repay. H.R. 1210 would give community bankers the flexibility they need to serve their customers.

Enforcement Safe Harbor for TRID Implementation (H.R. 2213), introduced by Reps. Steve Pearce and Brad Sherman, would provide a critical safe harbor from enforcement actions for compliance errors arising from the implementation of the Consumer Financial Protection Bureau's (CFPB's) Truth In Lending Act/Real Estate Settlement Procedures Act Integrated Disclosures (TRID), provided the lender has acted in good faith to implement and comply with new regulations. Without this safe harbor, consumer mortgage closings are likely to be delayed due to the enormous complexity of the new rules and fear of excessive enforcement actions for minor errors.

Financial Product Safety Commission Act of 2015 (H.R. 1266), introduced by Rep. Randy Neugebauer, would change the structure of the CFPB so that it is governed by a five member commission rather than a single director. Commission governance would allow for a variety of views and expertise on issues before the CFPB and thus build in a system of checks and balances that is absent in a single director form of governance. Other federal regulators with jurisdiction over financial services providers, including the Federal Deposit Insurance Corporation, the Federal Reserve, and the Securities and Exchange Commission, all function quite well with similar governance structures.

Small Bank Exam Cycle Reform Act of 2015 (H.R. 1553), introduced by Rep. Scott Tipton, would allow a highly rated community bank with assets of less than $1 billion to use an 18 month exam cycle. Under current statute and agency guidance, banks with assets of less than $500 million and a CAMELS rating of 1 or 2 are eligible for an 18 month exam cycle. All other banks are subject to a 12 month exam cycle.

Preparations for bank exams, and the exams themselves, distract bank management from serving their communities to their full potential. For this reason, ICBA supports a 24 month exam cycle for highly rated community banks. Because examiners have more than sufficient information to monitor a community bank from offsite, we believe that this change would not compromise supervision, and would actually increase safety and soundness by allowing examiners to focus their limited resources on the true sources of risk.

Federal Savings Association Charter Flexibility Act (H.R. 1660), introduced by Rep. Keith Rothfus, which would create a new national charter option for federal savings associations. Under H.R. 1660, a federal savings association, or thrift, could elect to be regulated as a Covered Savings Association (CSA) with authority to exercise the full range of national bank powers. H.R. 1660 would provide flexibility for institutions to choose the business model that best suits their needs and the communities they serve, without having to go through the process or incurring the legal expense of converting to a national bank charter.

H.R. 1660 does not address whether the holding company of a CSA would become subject to regulation and supervision under the Bank Holding Company Act of 1956 (BHCA) once the CSA exercises national bank powers. The legal status of CSA holding companies should be clarified since the requirements of the BHCA and the Savings and Loan Holding Company Act (SLHCA) differ. Of special concern are grandfathered unitary savings and loan holding companies -- non-bank and commercial firms exempted from provisions of the SLHCA and BHCA by the Gramm-Leach-Bliley Act so long as their subsidiary thrifts exercise only thrift powers. These entities should not be granted full national bank powers without corresponding BHCA supervision and regulation. ICBA looks forward to working with Rep. Rothfus to clarify the status of CSA holding companies under the proposed legislation.

Financial Institutions Examination Fairness and Reform Act (H.R. 1941), introduced by Reps. Lynn Westmoreland and Carolyn Maloney, would go a long way toward improving the oppressive examination environment that many community banks experience during and following an economic downturn. Among other provisions, H.R. 1941 would create an Office of Independent Examination Review within the Federal Financial Institutions Examination Council and give financial institutions a right to an expedited, independent review of an adverse examination determination before the Office's Director or before an independent administrative law judge.

ICBA also supports the provisions of H.R. 1941 that would create more consistent and commonsense criteria for loan classifications and capital determinations. Establishing conservative, bright-line criteria will allow lenders to modify loans, as appropriate, without fear of being penalized. If these standards become law, they will give bankers the flexibility to work with struggling but viable borrowers and help them maintain the capital they need to support their communities.

The Reforming CFPB Indirect Auto Financing Guidance Act (H.R. 1737), introduced by Rep. Guinta, would effectively nullify the CFPB's guidance on indirect auto lending. In proposing and issuing guidance primarily related to indirect auto financing, the CFPB would be required to provide for a public notice and comment period, make available all studies, data, and other information on which the guidance is based, and meet other requirements intended to ensure the process is open, transparent, and responsive to public input. The CFPB would also be required to consult with the Board of Governors of the Federal Reserve System, the Federal Trade Commission, and the Department of Justice. ICBA suggests strengthening H.R.

1737 by requiring the CFPB to also consult with the Federal banking regulators, the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency.

Thank you again for holding this hearing and for the opportunity to submit this statement for the record. ICBA is committed to working with this committee to advance the bills noted above.

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Statement for the Record

On behalf of the

American Bankers Association

American Financial Services Association

American Land Title Association

Consumer Bankers Association

Credit Union National Association

Financial Services Roundtable

Independent Community Bankers of America

Mortgage Bankers Association

National Association of Federal Credit Unions

To the

U.S. House Financial Services Committee Subcommittee on Financial Institutions and Consumer Credit

June 11, 2015

Chairman Neugebauer, Ranking Member Clay, and members of the Subcommittee on Financial Institutions and Consumer Credit, ABA, AFSA, ALTA, CBA, CUNA, FSR, ICBA, MBA, NAFCU jointly appreciate the opportunity to submit for the record our combined views on H.R. 1266, bipartisan legislation that would transition the governing structure at the Consumer Financial Protection Bureau (CFPB) to a five-member, bipartisan commission.

Together, we represent thousands of financial institutions of all sizes located in every state across the country.

I. BACKGROUND

In 2010, Congress created the Consumer Financial Protection Bureau (CFPB) and granted it rulemaking, supervisory, enforcement, and other powers over more than 15,000 financial institutions, and with it, a vast array of consumer financial products and services. The CFPB's massive jurisdiction includes an entire sector of American finance from banks and credit unions, to innumerable financial services companies of all sizes, including larger participants in the financial system, ultimately touching all Americans.

As trade associations representing those institutions supporting America's consumers, we write to express our support for bipartisan legislation, H.R. 1266, which will ensure the CFPB remains a strong and effective regulator whose mission is to protect consumers regardless of which political party is in the White House.

II. BIPARTISAN LEGISLATION, H.R. 1266

H.R. 1266 is a bipartisan bill that is modeled after the Wall Street Reform and Consumer Protection Act that passed the House in December 2009. H.R. 1266 would create a five-member, bipartisan board at the CFPB, which would provide a sustainable governing structure that allows for an array of expert views from various parts of the retail banking industry; robust and transparent debate; and certainty and stability to a three trillion dollar industry. Commissioners would be appointed by the president and confirmed by the Senate and would serve staggered terms.

III. A COMMISSION ENSURES THE LONGEVITY OF CONSUMER PROTECTION

Concentrating the CFPB's authority in a sole director jeopardizes the foundation of the Bureau as an objective, neutral consumer protection agency. A commission would serve as a source of balance and stability for consumers and the financial services industry by encouraging internal debate and deliberation, ultimately leading to increased transparency. Moreover, a commission would further promote the CFPB's ability to make bipartisan and reasoned judgments to ensure consumers receive the protection they deserve, which in turn would help strengthen the economy; and would avoid the risk of politically motivated decisions causing uncertainty and harm to consumers.

IV. A COMMISSION WAS THE ORIGINALLY INTENDED STRUCTURE FOR THE CFPB

To preserve the CFPB as a strong and effective regulator, with a mission to protect consumers regardless of which political party is in the White House, Congress should return the CFPB to its originally intended structure, from a sole director to a bipartisan commission.

In December 2009, the House passed legislation that would have created a five-member bipartisan commission to oversee the CFPB.[1] This effort was led by then-House Speaker Nancy Pelosi (D-CA) and then-House Financial Services Chairman Barney Frank (D-MA) and received strong Democrat support.[2] During public debate over the agency's creation, then-professor Elizabeth Warren, whose ideas led to the creation of the CFPB, called for a Financial Product Safety Commission (FPSC) and modeled what is now the CFPB after the Consumer Product Safety Commission, which is overseen by a board of five commissioners.[3] The idea of a commission to oversee consumer financial products was also endorsed by the Department of Treasury under the Obama Administration.[4]

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[1] H.R. 4173, Sec. 4103, Establishment and Composition of the Commission, p. 825, http://www.gpo.gov/fdsys/pkg/BILLS-111hr4173rfs/pdf/BILLS-111hr4173rfs.pdf.
[2] H.R. 4173 Final Passage, Roll Call 968, http://clerk.house.gov/evs/2009/roll968.xml.
[3] Democracy, *Unsafe at Any Rate,=* Issue #5 Summer 2007, http://www.democracyjournal.org/5/6528.php?page=all
[4]Department of Treasury, *Financial Regulatory Reform, A New Foundation: Rebuilding Financial Supervision and Regulation*, p. 58. "The CFPA should be structured to promote its independence and accountability. The CFPA will

Consequently, the creation of a five-member commission began with strong Democratic support and is a common-sense proposal in the effort to strengthen the CFPB and ensure its longevity to protect consumers for generations to come.

V. A COMMISSION IS THE TRADITIONAL STRUCTURE FOR FEDERAL AGENCIES

A commission is the traditional and customary structure for independent federal agencies, helping to ensure bipartisanship and impartiality. For example, the following independent agencies all have a commission structure:

- The Federal Reserve Board (FRB);
- The Federal Deposit Insurance Corporation (FDIC);
- The Securities and Exchange Commission (SEC);
- The Communities Futures Trading Commission (CFTC);
- The National Credit Union Administration (NCUA).

VI. CONCLUSION

The CFPB has tremendous authority to supervise a multi-trillion dollar industry, which as we have learned, can have incredible ramifications on our economy. As such, it is imperative the CFPB remain stable, be deliberative, and remain bipartisan – for the sake of the American consumer and the U.S. economy.

have a Director and a Board. The Board should represent a diverse set of viewpoints and experiences. At least one seat on the Board should be reserved for the head of a prudential regulator."

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June 10, 2015

The Honorable Randy Neugebauer
Chairman
House Financial Services Committee
Subcommittee on Financial Institutions &
Consumer Credit
United States House of Representatives
Washington, D.C. 20515

The Honorable Wm. Lacy Clay
Ranking Member
House Financial Services Committee
Subcommittee on Financial Institutions &
Consumer Credit
United States House of Representatives
Washington, D.C. 20515

Re: "Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence"

Dear Chairman Neugebauer and Ranking Member Clay:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nations federally chartered credit unions, I write regarding tomorrow's legislative hearing, "*Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence*." NAFCU appreciates the subcommittee's review of these important measures, many of which would impact credit unions and their members.

Of particular interest to credit unions, tomorrow the subcommittee will discuss bipartisan legislation, the *National Credit Union Administration Budget Transparency Act* (H.R. 2287), introduced by Representatives Mulvaney (R-SC) and Sinema (D-AZ). NAFCU strongly supports this important commonsense legislation that would require the National Credit Union Administration (NCUA) to hold a public hearing on its annual budget and publish a draft of the budget for public consumption in the *Federal Register*. Given that credit unions fund the agency through various assessments, NAFCU supports gaining a clear picture of the agency's expenditures through this simple act of transparency. Importantly, holding a public hearing on the budget was standard practice at NCUA until 2009. It is also worth noting that nothing is this measure would prevent NCUA from obtaining the funds necessary to carry out its mission to, through regulation and supervision, provide a safe and sound credit union system.

NAFCU also supports several of the other pieces of legislation being discussed during tomorrow's hearing, including:

***Financial Product Safety Commission Act* (H.R. 1266)**
Introduced by Chairman Neugebauer (R-TX) this bipartisan legislation would change the leadership structure of the Consumer Financial Protection Bureau (CFPB) from a single director to a bipartisan led commission. NAFCU has long supported this effort as a diversity of opinion, particularly as the new agency is in its infancy, could lead to greater discussion about CFPB initiatives and how they would ultimately impact credit unions.

***Financial Institutions Examination Fairness and Reform Act* (H.R. 1941)**
Introduced by Representatives Westmoreland (R-GA) and Maloney (D-NY) this bipartisan legislation would provide credit unions with much needed clarity and consistency in the examination process. The

bill ensures that credit unions are provided with timely feedback from regulators and have ample avenues to appeal exam findings without fear of retribution. Additionally, NAFCU is keenly aware of exam cycle issues credit unions face and supports prudent timing in this regard.

***Financial Institution Customer Protection Act* (H.R. 766)**
Introduced by Chairman Blaine Luetkemeyer (R-MO) and Representative Alcee Hastings (D-FL), this bipartisan legislation would ensure that the federal banking regulators must put into writing any suggestion to terminate a customer's banking account in an ongoing effort to address the Department of Justice "Operation Choke Point" program.

***Portfolio Lending and Mortgage Access Act* (H.R. 1210)**
Introduced by Representative Andy Barr (R-KY) this legislation would make meaningful change to the CFPB's Qualified Mortgage (QM) definition under the ability-to-repay rule. Under the bill, residential mortgage loans held in portfolio by credit unions and other lending would qualify for the QM safe harbor. Holding loans in portfolio is the ultimate form of risk retention.

Legislation related to integrated disclosure requirements for mortgage loans (H.R. 2213)
Introduced by Vice Chairman Pearce (R-NM) and Representative Sherman (D-CA) this legislation would provide a reasonable hold-harmless period for enforcement of the CFPB's TILA-RESPA Integrated Disclosures regulation for those who make good faith efforts to comply. While NAFCU appreciates the CFPB's indication that they will be sensitive to credit unions and other institutions that make good-faith efforts, this legislation would take an additional step to ensure a smooth transition period for good actors.

Again, thank you for your continued focus on regulatory relief for community based financial institutions including credit unions. We look forward to continuing to work with the subcommittee on these important pieces of legislation and other issues as the 114th Congress continues. If my staff or I can be of assistance to you, or if you have any questions regarding this issue, please feel free to contact myself, or NAFCU's Director of Legislative Affairs, Jillian Pevo, at 703-842-2836.

Sincerely,

Brad Thaler
Vice President of Legislative Affairs

cc: Members of the House Financial Services Subcommittee on Financial Institutions and Consumer Credit

NADA

AFSA Protecting Credit Since 1916 American Financial Services Association

RVDA The National RV Dealers Association Powered by Dealers

MOTORCYCLE INDUSTRY COUNCIL

AmericanInternational AutomobileDealers

NIADA NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

AUTO ALLIANCE DRIVING INNOVATION

NATIONAL AUTO AUCTION ASSOCIATION NAAA

RVIA RECREATION VEHICLE INDUSTRY ASSOCIATION

June 10, 2015

Dear Representative:

We, the undersigned organizations who represent businesses that make, sell, finance, auction and service motor vehicles are writing to express our strong support for H.R. 1737, the "Reforming CFPB Indirect Auto Financing Guidance Act." This bipartisan bill, introduced by Reps. Guinta (R-NH) and Perlmutter (D-CO), would rescind the Consumer Financial Protection Bureau's (CFPB) flawed 2013 auto finance guidance and allow the CFPB to reissue it under a more transparent and better informed process. This new bill is identical to H.R. 5403, which garnered 149 cosponsors last Congress.

H.R. 1737, drafted by members of the House Financial Services Committee on a bipartisan basis, currently has 82 bipartisan cosponsors. In addition to rescinding the 2013 guidance, H.R. 1737 would require that, prior to issuing any new guidance related to indirect auto financing, the CFPB:

- provide notice and a period for public comment;
- make public any studies, data, and analyses upon which the guidance is based;
- consult with the Federal Reserve Board, the Federal Trade Commission and the Department of Justice; and

- study the cost and impact of the guidance on consumers as well as women-owned, minority – owned, and small businesses.

This is the entire scope of the bill. By design, H.R. 1737 does not impinge on the CFPB's structure, jurisdiction, or authorities.

H.R. 1737 is needed to produce a more informed guidance compared to the 2013 guidance, which lacked public input, transparency, consultation with the CFPB's sister agencies and, by the CFPB's own admission, any study of the impact of the guidance on consumers. As a consequence of being issued without these essential safeguards, the CFPB's guidance could potentially (1) eliminate a dealer's ability to discount credit in the showroom; (2) raise credits costs; and (3) push marginally creditworthy consumers out of the auto credit market entirely.

Apart from the fact that guidance should not be used as a means to make sweeping policy and market changes, the CFPB auto guidance does not effectively manage fair credit risk in the showroom, which is its purported goal. The Department of Justice (DOJ), however, has created a better approach to address fair credit risk without decreasing competition and harming consumers. The DOJ model was used as a template for a comprehensive compliance program that the National Automobile Dealers Association, National Association of Minority Automobile Dealers, and American International Automobile Dealers Association issued last year to their respective members. This compliance program addresses fair credit risk where it matters -- in the showroom -- while preserving a dealer's ability to discount credit.

Thirteen Congressional letters signed by over 90 Members and Senators on both sides of the aisle have been written to the CFPB asking questions and expressing concern regarding its auto guidance. Nonetheless, many essential questions still remain unanswered. The open and transparent process required by H.R. 1737 would provide a framework for those questions to be answered, and to ascertain whether the CFPB's new policy can withstand public scrutiny.

Since the 1920s, credit has been the lifeblood of America's auto industry. H.R. 1737 is a moderate, bipartisan process bill that does not direct a result or tie the CFPB's hands, but merely gives the public an opportunity to scrutinize and comment on the CFPB's attempt to change the auto loan market via "guidance."

We respectfully ask you to protect consumers and support this good government bill by cosponsoring H.R. 1737. Thank you for your consideration.

Sincerely,

Peter Welch
President, National Automobile Dealers Association

Chris Stinebert
President and CEO, American Financial Services Association

Steve Jordan
Executive Vice President, National Independent Automobile Dealers Association

Cody Lusk, AIADA
President, American International Automobile Dealers Association

Mitch Bainwol
President and CEO, Alliance of Automobile Manufacturers

Phil Ingrassia
President, The National RV Dealers Association

Richard Coon
President, Recreation Vehicle Industry Association

Frank Hackett
CEO, National Auto Auction Association

Tim Buche
President and CEO, Motorcycle Industry Council

ALAN & STACEY JOPE
20 Lafayette Street
Laconia, NH 03246-3238

June 11, 2015

The Honorable Frank Guinta
United States House of Representatives
326 Cannon House Office Building
Washington, DC 20515

Dear Congressman Guinta,

My name is Alan Jope and I live in Laconia, New Hampshire. I understand that you are working on legislation that will help ensure that financing by car and truck dealerships is not stymied by the CFPB. I wanted to let you know how critical it is that dealerships, like AutoServ of Tilton, are to regular people like me. When I was trying to get financed, financing for a car last fall that I was trying to purchase, several banks and credit unions had all turned me down. Nearly a dozen or more declined to finance me because my credit score at the time was 436. Those banks and credit unions either would not consider finance approval for me or some counter offered terms with a very high interest rate and high down payments I didn't have.

Fortunately, my local dealer, AutoServ, was able to secure financing for the car that I purchased from them. And, the interest rate was a reasonable rate of 14.99% – much lower than what the counter offers were by the banks. But for my local dealer's efforts on my behalf, there is no doubt I would not be driving in my current car. And this was a desperate situation as I am the sole income earner for my family. My wife is ill, and we have two young children in school. After my old vehicle broke down, I needed to find reliable, replacement transportation so I could get to work and continue to provide for my family, as well as remain gainfully employed at my job. Any steps by the federal government to limit the ability of local dealerships to help customers like me should be stopped.

Thank you for working on legislation to help ensure dealerships are still able to help customers like me.

Sincerely,

Alan & Stacey Jope

Statement of the National Automobile Dealers Association
A Hearing Entitled
"Examining Legislative Proposals to Preserve Consumer Choice and Financial Independence"
Before the House Financial Institutions and Consumer Credit Subcommittee
June 11, 2015

Mr. Chairman, thank you for the opportunity to submit the comments of the National Automobile Dealers Association (NADA) to the hearing record. NADA is a national trade association that represents 16,000 franchised new car and truck dealers and collectively employs more than one million individuals. NADA members are primarily engaged in the retail sale and lease of new and used motor vehicles, and also engage in automotive service, repairs, and parts sales. Last year America's franchised new car and truck dealers sold or leased approximately 16.5 million new cars and light duty trucks. NADA members operate in every congressional district in the country, and the majority of our members are small businesses as defined by the Small Business Administration.

The Auto Industry Strongly Supports H.R. 1737

In 2013, the Consumer Financial Protection Bureau (CFPB) issued guidance which threatens to eliminate a dealer's flexibility to discount the annual percentage rates (APRs) offered to consumers to finance vehicle purchases.[1] The CFPB is attempting to change the $907 billion auto financing market and limit competition *without* prior public comment and *without* analyzing the impact of its guidance on consumers.

With the CFPB's actions likely to raise the cost of credit for car buyers, Congress should pass H.R. 1737, the "Reforming CFPB Indirect Auto Financing Guidance Act", introduced by Reps. Guinta (R-NH) and Perlmutter (D-CO). The bill would rescind the CFPB's flawed auto finance guidance and make the Bureau more transparent and accountable when issuing any such guidance in the future.

NADA, along with the trade associations representing businesses that make, sell, finance, auction and service motor vehicles, strongly supports H.R. 1737.[2] The open and transparent process required by H.R. 1737 would help determine whether the CFPB's new auto financing policy is based on accurate analysis and is in the best interest of consumers.

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[1] CFPB Bulletin 2013 – 02, issued March 21, 2013: http://files.consumerfinance.gov/f/201303_cfpb_march_-Auto-Finance-Bulletin.pdf

[2] See attached letter of support from NADA, the Alliance of Automobile Manufacturers, the American Financial Services Association, the American International Automobile Dealers Association, the Recreational Vehicle Dealers Association, the Recreational Vehicles Industry Association, the National Auto Auction Association, the Motorcycle Industry Council, and the National Independent Automobile Dealers Association.

Broad Bipartisan Support For H.R. 1737

H.R. 1737 currently has 89 bipartisan cosponsors (49 R, 40 D) with strong support from Members across the political spectrum, including many Members of the House Financial Services Committee. The bill is identical to H.R. 5403, introduced by Reps. Stutzman (R-IN) and Perlmutter (D-CO) last Congress, which garnered 149 cosponsors (92 R, 57 D) including 30 Members of the House Financial Services Committee (19 R, 11 D). H.R. 5403 was a narrower version of another CFPB guidance transparency bill (H.R. 4811) which passed the House Financial Services Committee by a bipartisan vote of 35-24 on June 11, 2014.

Consumer Benefits of Dealer-Assisted Financing

Dealer-assisted financing makes credit more readily available, makes credit cheaper, and saves Americans millions of dollars every year. The current dealer-assisted financing system offers access to thousands of banks, credit unions and other lenders all vying to provide vehicle financing to consumers. That access is what keeps the auto financing market so competitive. The automobile dealer's ability to "meet or beat" its competitors' rates produces vigorous marketplace competition that benefits consumers. In fact, a majority of car buyers choose to finance their purchases through optional, indirect financing at dealerships.

Dealers often discount interest rates to earn a customer's business. The CFPB's 2013 auto finance guidance threatens to eliminate a consumer's ability to get a lower rate at a dealership by pressuring finance sources into changing the way they compensate dealers to a "flat fee" that dealers cannot discount. This new approach would eliminate a dealer's ability to "meet or beat" a competitor's finance rate and, in the process, would limit the market competition that frequently provides customers a better APR than those offered by banks or credit unions.

Dealerships, of course, incur costs for serving as the "storefront" for banks, credit unions, and finance companies. Dealers only make a "profit" (which is often limited because dealers frequently lower their own compensation in order to discount the APR to beat a competitor's rate) after paying fixed costs, including: advertising, payroll, overhead, and regulatory compliance costs. This fact refutes false claims that dealer-assisted finance results in an "overcharge" to consumers.[3] Dealer reserve is simply the dealer's retail margin for arranging affordable and competitive financing[4] and represents the recovery of costs that any retailer of credit would necessarily incur.

[3] Glenn Kessler, *Warren's False Claim that 'auto dealer markups cost consumers $26 billion a year'*, Washington Post, (May 5, 2015). See also NADA, CRL's 2011 Analysis of Dealer-Assisted Financing is Flawed and Untrue.
[4] Contractual caps between dealers and lenders limit the amount of dealer reserve, generally at about 2 percent. (Loans with longer terms typically have lower percentage rate caps than loans with terms of five years or less intense competition in the vehicle financing industry frequently prevents dealers from charging the full amount of dealer reserve permitted by their finance sources.

Need For the Legislation (H.R. 1737)

The CFPB released its guidance on March 21, 2013 without prior notice or an opportunity for public comment, alleging a "significant risk" that dealer-assisted auto financing was having a "disparate impact" on the price of credit charged to consumers in protected classes. This controversial guidance pushes auto finance sources into changing the way they compensate dealers to a flat fee approach that dealers could no longer discount for customers.

Auto dealers are committed to fair credit practices that benefit all consumers, and we believe that discrimination is completely unacceptable in auto financing or anywhere else. Dealers have demonstrated this commitment by proposing a comprehensive compliance program, based on a model developed by the U.S. Department of Justice (DOJ), to protect against unintentional discrimination while preserving the benefits of a competitive auto-finance market.[5]

The CFPB has based its guidance on allegations of fair credit violations without providing its complete analysis or documentation. Careful study of the CFPB guidance, however, reveals that the CFPB's attempt to regulate auto dealers by pressuring lenders to change their business practices (1) does not address the fair credit problem the CFPB alleges[6] ; and (2) would eliminate the ability of dealers to further discount credit in the showroom which, in turn, would likely raise credit costs and decrease access to credit for consumers.

The CFPB's effort to eliminate dealer flexibility to offer consumers a discounted interest rate when arranging auto financing hurts consumers for two reasons. First, the CPFB is denying many customers an opportunity to receive a lower APR in the showroom. Second, a dealer's ability to undercut competitors from a bank, credit union or another dealer puts a downward pressure on all auto loan interest rates. This downward pressure from many competitors benefits consumers.

CFPB's Attempt to Fundamentally Change and Regulate the Auto Loan Market Via Guidance

In addition to the harm the CFPB's new policies would cause consumers, Congress should take notice that the CFPB is bringing about these detrimental changes via "guidance," thus avoiding both the rulemaking process and coordination with the federal agencies that Congress vested with exclusive federal authority over motor vehicle dealers.[7]

Through its guidance, the CFPB is attempting to significantly alter the operation of a large and efficient market without following the standard rulemaking process and without considering stakeholder input, public comments, and cost/benefit analysis that are associated with it. By avoiding the rulemaking process, the CFPB did not have to reveal the methodology it employs to

[5] NADA Fair Credit Compliance Policy and Program, see pgs. 3-4. www.nada.org/faircreditprogram

[6] NADA, Fallacy of Flats: Beware of Claims that Flat Fees Eliminate a Dealer's Risk of Violating Fair Credit Laws, (2014).

[7] Section 1029 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (Dodd-Frank Act) precludes the CFPB from exercising any authority over motor vehicle dealers engaged in indirect financing and further provides that the federal agencies who could exercise jurisdiction over dealers prior to the enactment of section 1029 continue to have authority over dealers.

determine whether disparate impact discrimination exists; convene a panel to ascertain what impact its new policies would have on small business; give the public and affected stakeholders an opportunity to comment on the record; and conduct a cost/benefit analysis.

A CFPB official has characterized the CFPB guidance as "simply [a] restatement of existing law."[8] However, the guidance could, in fact, fundamentally change how vehicles are financed in our country. The regulatory uncertainty that the guidance has produced within the vehicle financing industry and the numerous unanswered questions from Congress and others concerning the guidance show that it is much more than a restatement of existing law.

Provisions of H.R. 1737 – Minimum Safeguards For Transparency

H.R. 1737 would rescind the CFPB's flawed 2013 auto finance guidance and allow the agency to reissue it under an open and transparent process.[9] Before issuing new auto finance guidance, H.R. 1737 would require the CFPB to:

- provide notice and a period for public comment;
- make public any studies and analyses upon which the guidance is based;
- consult with the Federal Reserve Board, Federal Trade Commission and Department of Justice; and
- study the cost and impact of the guidance on consumers as well as women—owned, minority–owned, and small businesses.

The CFPB took none of these essential steps before issuing its 2013 auto finance guidance. While most guidance is technical and non-controversial, the CFPB's auto finance guidance is different, as it threatens to: (1) eliminate a dealer's ability to discount credit in the showroom; (2) raise credits costs; and (3) push marginally creditworthy consumers out of the auto credit market.

H.R. 1737 is a moderate bill that does not dictate a result or tie the CFPB's hands. The bill merely ensures transparency and public notice so the public has an opportunity to analyze and comment on the CFPB's attempt to change the auto loan market.

CFPB Has Failed to Answer Direct Questions From Congress For Nearly Two Years

Despite thirteen Congressional letters sent to the CFPB that were signed by over 90 Members and Senators from both sides of the aisle, the Bureau still has not answered many essential questions about the accuracy of the analyses upon which the CFPB relies and the methodologies it employs.[10] The open and transparent process required by H.R. 1737 would provide a framework for those questions to be answered and would help ascertain whether the CFPB's policies can withstand objective scrutiny.

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[8] "The Consumer Financial Protection Bureau's Semi-Annual Report to Congress: Hearing before the Senate Banking, House and Urban Affairs Committee, 113th Cong., 1st Sess. 17 (2013).

[9] Please see the attached chart entitled, *"Adding Appropriate Safeguards to CFPB Guidance, Process required under Standard APA/Dodd-Frank Rulemaking vs. H.R. 1737"* to compare the differences between the procedures for a rulemaking and the less stringent procedures required by H.R. 1737.

[10] These letters can be accessed at: https://www.nada.org/CustomTemplates/GeneralPage.aspx?id=21474838453

The process for issuing guidance established in H.R. 1737 is consistent and in accordance with OMB's practices on agency guidance documents.[11] The Bulletin on "Agency Good Guidance Practices" sets forth general policies and procedures to ensure that guidance documents of Executive Branch departments and agencies are developed with appropriate review and public participation, accessible and transparent to the public, and of high quality.

Need for CFPB to Use Accurate and Transparent Analysis to Support Policy Decisions

The CFPB has based its auto finance guidance on its claim that there is a significant risk of disparate impact discrimination in dealer-assisted financing. After multiple Congressional calls for additional information, in September 2014 the CFPB released a white paper concerning one element of its analysis – the use of proxy methodology to identify members of protected classes for use in determining whether disparate impact is occurring in indirect auto financing.

The scope of the CFPB's white paper, however, is very limited. It is confined to an analysis of how the CFPB determines the probability that a consumer is a member of a particular group. It does not address how the CFPB uses those probabilities to calculate either pricing disparities or the margin of error surrounding those disparities.

The CFPB's white paper also does not address the essential question of what analytical controls the CFPB uses to ensure that the consumers it is comparing are "similarly situated." And, even with regard to its primary purpose, the CFPB's own testing indicates that its proxy method, the Bayesian Improved Surname Geocoding (BISG) method, frequently fails to accurately reflect a consumer's actual race or ethnicity.

Importantly, the white paper does not reveal how the CFPB corrects these problems to ensure its classification of consumers is accurate. In a statement dated September 17, 2014, the three trade groups that represent U.S. new-car dealers – NADA, the National Association of Minority Automobile Dealers, and the American International Automobile Dealers Association – explained that, even after publication of the CFPB's white paper,

> "many of the questions that Congress and others have asked remain unanswered. We look forward to rigorous peer review to ensure that the tools the CFPB is using to address fair credit concerns may actually accomplish its goals. There are legitimate, market-based reasons for disparities in interest rates - from monthly budget constraints, to the presence of more competitive offers, to inventory reduction considerations - all of which are nondiscriminatory and all of which can be documented in the transaction."

[11] See OMB bulletin entitled "*Final Bulletin for Agency Good Guidance Practices*," issued Jan. 18, 2007. The bulletin states: "Pre-adoption notice-and-comment can be most helpful for significant guidance documents that are particularly complex, novel, ***consequential***, or ***controversial***." (emphasis added).

Questionable Accuracy of CFPB's Methodology to Determine Fair Credit Risk

Despite multiple calls by Congress to disclose the statistical model and analysis the CFPB uses to allege disparate impact, the CFPB's release of supporting public analysis or documentation on the guidance remains limited. To test the accuracy of the CFPB's method, a study by a prominent research firm, Charles River Associates (CRA), evaluated the CFPB's methodology for measuring pricing disparities in auto finance and found several significant flaws that show the CFPB's methodology to be inaccurate, incomplete, and unreliable.

It should be noted federal law prohibits a creditor from considering or inquiring into the race or ethnicity of the borrower when extending auto credit. Therefore, to establish the race or ethnicity of the borrower, CFPB acknowledged that it relies on "proxies." The proxy method used by the CFPB is the BISG method. This statistical method makes a best guess of the borrower's race or ethnicity based on the borrower's last name and address.

CRA applied BISG to a large database of consumer mortgage transactions, where each borrower's race and ethnicity is known. The CRA study found that the CFPB's method frequently fails to correctly identify a consumer's actual race or ethnicity. For example, the study found that the CFPB's proxy methodology overestimates the number of African-Americans by 41 percent.[12] One of the errors that led to this miscalculation was that the CFPB incorrectly assumed the population of applicants for vehicle financing and the general population in a given zip code were the same.

Further, the CRA study determined that the CFPB's methodology is incomplete since it does not consider legitimate business reasons why dealer discounts may vary among consumers. For example, the CFPB does not consider that dealers routinely try to "meet or beat" a competing offer from a bank, credit union, or another dealer to gain a customer's business. Dealers also will discount an interest rate to move a slow-selling model. The Department of Justice has accepted these reasons as legitimate to explain disparities in credit pricing, yet the CFPB refuses both to acknowledge these neutral factors and to provide its rationale for rejecting them.

The CFPB is aware its methodology is unreliable, yet it continues to rely on flawed assumptions. Despite acknowledging its methodology overestimates some minority groups (the CFPB's own September 2014 white paper reveals that its methodology overestimates the African American population by 20 percent),[13] the Bureau continues to threaten enforcement actions against auto lenders in an attempt to eliminate or limit dealer discounts in the showroom.

CFPB Director Richard Cordray publicly disagreed with the conclusions of the CRA study, but did not state any basis for his disagreement. To date, the agency has yet to formally respond to this study, and it appears unlikely it ever will do so.[14]

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[12] Charles River Associates, *Fair Lending: Implications for the Indirect Auto Finance Market* at 4 (Nov. 2014).
[13] Consumer Financial Protection Bureau, *Using publicly available information to proxy for unidentified race and ethnicity: A methodology and assessment* at 14 (2014).
[14] *The Consumer Financial Protection Bureau's Semi-Annual Report to Congress: Hearing before the House Financial Services Committee*, 114th Cong., 1st Sess. (March 3, 2014). CFPB Director Richard Cordray stated at the hearing when questioned on the Charles River study: "We don't find some obligation

The current system of dealer-assisted financing is fair, competitive, and boosts access to affordable credit for consumers. Any disruption in this highly efficient model can only be justified if supported by reliable data and objective analysis. These significant flaws in the CFPB's policy could have been avoided if the Bureau had employed a process that was data- and market-driven and transparent. H.R. 1737 would provide that needed transparency.

The Ally Settlement - Based on Flawed Methodology?

The CFPB's failure to rebut the CRA study is troubling, particularly since it has taken enforcement actions based on a methodology that has been shown to be unreliable in the area of auto finance. On December 20, 2013, the CFPB announced consent agreements into which the CFPB and the DOJ entered with Ally Financial, Inc. and Ally Bank (Ally), a major indirect auto lender, in a case which involved allegations of fair credit violations. The CFPB issued a press release stating "[t]he CFPB and DOJ determined that more than 235,000 minority borrowers paid higher interest rates for their auto loans between April 2011 and December 2013 because of Ally's discriminatory pricing system."[15] Yet, according to aspects of the proxy methodology the CFPB has chosen to reveal to Congress, the "235,000 minority borrowers" exist only as a probability, despite the CFPB presenting this figure in its press release as the *actual* number of minority consumers who were allegedly harmed. The CFPB's assertions of fact in its press release demonstrate why it is important for the CFPB to reveal the accuracy of the methodologies supporting its assertions.

The Ally consent agreement is not proof that the CFPB's drive to eliminate a dealer's ability to discount credit in the showroom is justified. Based on facts listed below, the Ally consent agreement appears simply to be a rational business decision made in the current regulatory atmosphere. We urge the Committee to consider the following facts:

- Ally admitted no wrongdoing in its settlement, and stated that it believed it and the dealers with which it does business did nothing wrong.[16] In fact, Ally could not further rebut the CFPB's assertions of fair lending violations because the Bureau refused to disclose to Ally how it calculates fair lending bias.[17]
- The case against Ally was based entirely on statistics and methodologies which have not been fully revealed publicly or to Congress. The public still does not know whether the Bureau takes into account legitimate factors that can affect finance rates – for example, a dealer's ability to lower its interest rate to meet a competitive offer or the customer's monthly budget constraints. Indeed, Ally released a statement when the consent order was announced saying that "based on the company's analysis of its business, it does not believe that there is measurable discrimination by auto dealers."[18] This statement is evidence that

to respond to studies out there all the time in all aspects of our work."

[15] Press Release by the CFPB, "*CFPB and DOJ Order Ally to Pay $80 Million to Consumers Harmed by Discriminatory Auto Loan Pricing,*" (Dec. 20, 2013).

[16] Ally Financial Statement on Auto Financing Consent Orders, Dec. 20, 2013.

[17] *Consumer Financial Cover-Up – An agency won't tell employers or Congress how it calculates bias,*" Wall St. Journal, (Mar. 17, 2014.)

[18] Ally Financial Statement on Auto Financing Consent Orders, Dec. 20, 2013.

CFPB did not perform a comprehensive regression analysis (i.e., one that includes all the relevant factors, not simply those chosen by the CFPB).

- Three days after the Ally consent order, the Federal Reserve Board approved Ally's application to become a financial holding company, enabling Ally to continue offering insurance products and other services that Ally might have been forced to discontinue. According to the *Wall Street Journal*, "Standard & Poor's Ratings Services... warned it would potentially lower the company's ratings if it failed to secure financial holding company status."[19]
- According to *Automotive News*, "the CFPB was one of a number of regulators that had input on the Federal Reserve's decision on financial holding company status." An Ally official stated that "[n]o investor publically was going to invest in us unless we got financial holding company status. And we could not do that without coming to terms with the CFPB."[20]
- On March 27, 2013, Ally announced an initial public offering where the U.S. government "would sell the bulk of its stake in the company."[21] (At the time of the consent order, the U.S. government had a 64 percent controlling interest in Ally.)

Although the consent order with Ally was reached over sixteen months ago, none of the $80 million Ally paid to the CFPB as part of the settlement has been distributed to consumers. According to the *New York Times*, "One reason for the delay...is that federal authorities have found it complicated to determine which Ally customers are minorities..." [22]

The fact that the funds have not been distributed raises serious concerns regarding the reliability of the CFPB's methodology and its certainty in forcing a settlement with Ally in 2013.

Assessing the Consumer Impact of the CFPB's Guidance - Eliminating a Consumer's Ability to Receive a Discounted Auto Loan

The government's potential elimination of the dealer's ability to discount credit in the showroom threatens to lessen competition, thereby reducing the availability of credit and costing consumers money. In its place, the CFPB wants to create an inflexible pricing structure that would wipe out a consumer's ability to get a dealer to "meet or beat" the best financing rate the consumer can get from another finance source. This ill-advised scheme would result in less competition, higher financing rates, and the loss of access to credit for many consumers. As a result, many consumers the CFPB is purportedly attempting to help would actually be harmed.

Section 1022 of the Dodd-Frank Act requires the CFPB to consider, when issuing a rule, the potential benefits and costs (including the potential reduction of consumer access to financial products and services) that could be caused by such a rule. One consequence of its avoiding the

[19] Andrew Johnson, *"Ally Receives Fed Approval for Financial Holding Company Status,"* Wall St. Journal, Dec. 23, 2013.
[20] Jim Henry, *"Ally won't be a 'Trojan horse' -- Lender sticks with dealer reserve, defies CFPB,"* Feb. 3, 2014.
[21] Tanya Agrawal, *"U.S. government to sell most of Ally Financial stake in IPO,"* Reuters, Mar. 27, 2014.
[22] Michael Corkery, Jessica Silver-Greenberg, *Prosecutors Scrutinize Minority Borrowers' Auto Loans,* N.Y. Times, Mar. 30, 2015.

rulemaking process is that the CFPB avoids having to conduct, and does not benefit from, a study into the potential impact its new policy would have on consumers. In response to a letter sent by 22 Senators, the CFPB acknowledged that it never studied how eliminating a dealer's ability to discount credit would affect the cost of credit paid by consumers.[23] Reducing a strong competitive force from the vehicle financing marketplace will likely raise the cost of credit for consumers.

Together, the weakening of competition and higher regulatory costs can be expected to result in higher credit costs for consumers. And, most troubling, the CFPB's actions could disproportionally hurt consumers with less-than-perfect credit since those customers will be less able to afford any higher rates and will therefore have even more limited options to buy a car or truck to meet their work and family needs.

CFPB is Pressuring Lenders to Change Practices Yet Takes the Position it is not Establishing New Policy

The CFPB claims it is not pushing the industry to non-discountable flat fees, and in support of that claim it points to another compliance option in its guidance: constraining dealer discretion accompanied by monitoring. In fact, the CFPB makes actual implementation of this latter option – constraining dealer discretion and monitoring – highly impractical. This option involves "imposing controls" on dealer reserve and then monitoring dealer behavior to ensure that those controls work. However, this option presents several problems for a lender.

First, the CFPB refuses to explain the rules for monitoring – that is, the Bureau will not tell lenders how to ensure they are comparing "apples to apples." Many aspects of a vehicle financing transaction have nothing to do with the background of the borrower, and these variables could lead to differentials in the amount of compensation a dealer gets paid for originating the financing. These include factors such as:

- the amount financed;
- the presence of a competing offer from another financing source;
- the borrower's budget constraints;
- the length of the loan; and
- the presence of a manufacturer subvention of the rate (for example, a special promotional program on a certain model vehicle).

If neutral, business-related factors such as these are the reason why the amount of a dealer's finance compensation varies from consumer to consumer, there is no unlawful discrimination. Hence, to do a proper comparison, these variables need to be held constant as part of the

[23] Letter from the Hon. Richard Cordray, Director, CFPB to Senators Portman (R-OH) and Shaheen (D-NH) (Nov. 4, 2013.)

CFPB's analysis. But the CFPB will not let lenders know which factors, if any, should be held constant in completing a disparate impact review.

Second, the CFPB still refuses to divulge the numerical basis point threshold at which the Bureau concludes that statistically significant pricing disparities exist. The CFPB apparently wants lenders to monitor dealer behavior without stating at what threshold disparate impact begins.

The Bureau's guidance requires indirect auto lenders to estimate which controls and thresholds the CFPB would find appropriate. This lack of clarity indicates there really is no safe harbor that can be achieved through "monitoring." Moreover, the CFPB has stated the analytical controls necessary to measure disparate impact are determined on a "case by case"[24] basis which is contrary to the intent of "guidance" meant to govern the behavior of an entire industry. The CFPB has not offered one example of a discretionary dealer compensation approach that indirect finance sources can adopt which is consistent with its guidance.

NADA's Fair Credit Compliance Program

Despite the fact that the CFPB's fair credit allegations are unsubstantiated, auto dealers are committed to fair and equal credit, and in January 2014, NADA released its *Fair Credit Compliance Policy & Program.*[25] This program is based on a model to manage fair credit risk developed by the DOJ. The DOJ's model is superior to the CFPB's guidance in that it addresses fair credit risk without decreasing competition and harming consumers. The DOJ model has also been embraced by the National Association of Minority Automobile Dealers and the American International Automobile Dealers Association. This compliance program addresses fair credit risk where it matters – in the showroom – while preserving a dealer's ability to discount credit.

The framework of the DOJ model is simple:

- A dealer who adopts the Program establishes a "Standard Dealer Participation Rate" – a standard retail margin – for its dealership;
- In each and every transaction, the dealer adds the Standard Dealer Participation Rate to the bank or finance company wholesale buy rate to establish the retail APR that the dealer offers to all prospective customers; and
- The Standard Dealer Participation Rate, which would generally be a set number of basis points, is the same for every deal and its amount is determined by the individual dealer.

The DOJ prudently recognized that eliminating the discounting of credit in the showroom would deprive consumers of the ability to obtain a lower, discounted rate from the dealer when there is a legitimate business reason for the lower rate, i.e., a reason that is unrelated to the customer's background. (In contrast, the CFPB's guidance could entirely eliminate a

[24] Letter from the Hon. Richard Cordray to Rep. Colleen Hanabusa (D-HI) 3 (Feb. 6, 2014).
[25] This guidance can be found at www.nada.org/faircreditprogram

customer's ability to negotiate a lower interest rate in the showroom.) The DOJ model allows for a downward deviation from the Standard Dealer Participation Rate – but only if one of seven good faith, pro-competitive situations is present. Examples of these pro-competition situations include where the consumer has access to a more competitive rate from another dealer or lender or where the consumer has a budget constraint. Thus, the DOJ model addresses fair credit concerns by promoting a standardized approach while preserving flexibility to allow consumers to benefit from today's competitive auto financing marketplace.

Conclusion

The CFPB's 2013 auto finance guidance was issued under a closed process with no transparency. The indirect vehicle financing model is efficient, competitive, and provides access to affordable credit to consumers in all credit tiers. Congress should direct the CFPB to be transparent and seek public input regarding the auto finance guidance to ensure the CFPB is using reliable, complete, and accurate analysis before it tampers with the $907 billion auto lending market through guidance.

Congress created the CFPB to protect consumers – and a transparent process is the best means to ensure that the CFPB develops policy positions that are in the consumer's best interest. Congress is rightly concerned that the CFPB in its auto finance guidance is:

- pressuring finance sources to move to flat fees, based on information and analysis that has been shown to be flawed;
- denying ordinary Americans the right to negotiate a lower interest rate in the showroom, and the right to seek a better deal; dictating the manner and amount of dealer compensation without regulatory, enforcement or supervisory jurisdiction over dealers; and
- proceeding without considering the impact of the guidance on consumers.

Passage of H.R. 1737 would create a process to correct the flawed CFPB auto lending guidance without encroaching on the CFPB's structure, jurisdiction, or authorities. CFPB should be encouraged to work with the impacted stakeholders. The retail auto industry has provided the CFPB with a better approach that directly addresses fair credit risk and preserves market flexibility and competition for the benefit of the consumer.

Mr. Chairman, H.R. 1737 is a modest, bipartisan bill that would require the CFPB to reexamine its flawed auto finance guidance in an open and transparent manner. On behalf of America's franchised auto dealers and their customers, we urge the Committee to pass H.R. 1737.

NADA AUTO ALLIANCE DRIVING INNOVATION AFSA Protecting Credit Since 1916 American Financial Services Association

AmericanInternational AutomobileDealers NATIONAL AUTO AUCTION ASSOCIATION NAAA NIADA NATIONAL INDEPENDENT AUTOMOBILE DEALERS ASSOCIATION

RVDA The National RV Dealers Association Powered by Dealers RVIA RECREATION VEHICLE INDUSTRY ASSOCIATION MOTORCYCLE INDUSTRY COUNCIL

June 10, 2015

Dear Representative:

We, the undersigned organizations who represent businesses that make, sell, finance, auction and service motor vehicles are writing to express our strong support for H.R. 1737, the "Reforming CFPB Indirect Auto Financing Guidance Act." This bipartisan bill, introduced by Reps. Guinta (R-NH) and Perlmutter (D-CO), would rescind the Consumer Financial Protection Bureau's (CFPB) flawed 2013 auto finance guidance and allow the CFPB to reissue it under a more transparent and better informed process. This new bill is identical to H.R. 5403, which garnered 149 cosponsors last Congress.

H.R. 1737, drafted by members of the House Financial Services Committee on a bipartisan basis, currently has 62 bipartisan cosponsors. In addition to rescinding the 2013 guidance, H.R. 1737 would require that, prior to issuing any new guidance related to indirect auto financing, the CFPB:

- provide notice and a period for public comment;
- make public any studies, data, and analyses upon which the guidance is based;
- consult with the Federal Reserve Board, the Federal Trade Commission and the Department of Justice; and
- study the cost and impact of the guidance on consumers as well as women-owned, minority – owned, and small businesses.

This is the entire scope of the bill. By design, H.R. 1737 does not impinge on the CFPB's structure, jurisdiction, or authorities.

H.R. 1737 is needed to produce a more informed guidance compared to the 2013 guidance, which lacked public input, transparency, consultation with the CFPB's sister agencies and, by the CFPB's own admission, any study of the impact of the guidance on consumers. As a consequence of being issued

without these essential safeguards, the CFPB's guidance could potentially (1) eliminate a dealer's ability to discount credit in the showroom; (2) raise credits costs; and (3) push marginally creditworthy consumers out of the auto credit market entirely.

Apart from the fact that guidance should not be used as a means to make sweeping policy and market changes, the CFPB auto guidance does not effectively manage fair credit risk in the showroom, which is its purported goal. The Department of Justice (DOJ), however, has created a better approach to address fair credit risk without decreasing competition and harming consumers. The DOJ model was used as a template for a comprehensive compliance program that the National Automobile Dealers Association, National Association of Minority Automobile Dealers, and American International Automobile Dealers Association issued last year to their respective members. This compliance program addresses fair credit risk where it matters -- in the showroom -- while preserving a dealer's ability to discount credit.

Thirteen Congressional letters signed by over 90 Members and Senators on both sides of the aisle have been written to the CFPB asking questions and expressing concern regarding its auto guidance. Nonetheless, many essential questions still remain unanswered. The open and transparent process required by H.R. 1737 would provide a framework for those questions to be answered, and to ascertain whether the CFPB's new policy can withstand public scrutiny.

Since the 1920s, credit has been the lifeblood of America's auto industry. H.R. 1737 is a moderate, bipartisan process bill that does not direct a result or tie the CFPB's hands, but merely gives the public an opportunity to scrutinize and comment on the CFPB's attempt to change the auto loan market via "guidance."

We respectfully ask you to protect consumers and support this good government bill by cosponsoring H.R. 1737. Thank you for your consideration.

Sincerely,

Peter Welch
President, National Automobile Dealers Association

Mitch Bainwol
President and CEO, Alliance of Automobile Manufacturers

Chris Stinebert
President and CEO, American Financial Services Association

Cody Lusk, AIADA
President, American International Automobile Dealers Association

Frank Hackett
CEO, National Auto Auction Association

Steve Jordan
Executive Vice President, National Independent Automobile Dealers Association

Phil Ingrassia
President, The National RV Dealers Association

Richard A Coon

Richard Coon
President, Recreation Vehicle Industry Association

Tim Buche
President and CEO, Motorcycle Industry Council

Adding Appropriate Safeguards to CFPB Guidance

Process required under Standard APA/Dodd-Frank Rulemaking vs. H.R. 1737

Informal APA Rulemaking under Dodd-Frank Act*	**H.R. 1737**
Public Notice in *Federal Register* (Must include contents specified in 5 USC § 553(b))	Provide notice and a period for public comment (CFPB decides length of public comment period)
Must make public, at the time of the notice, the studies, data, and analyses upon which the agency relies, and any other information important to providing an opportunity for informed public comment	Make public any studies, data, and analyses upon which the guidance is based
Cost Benefit Analysis (Pertaining to both consumers and covered persons, including the potential reduction of access by consumers to financial products or services resulting from the rule)	Study the cost and impact of the guidance on consumers as well as women-owned, minority-owned, and small businesses (strict cost benefit analysis not required)
Consultation with Other Federal Agencies to Ensure Consistency of Rules	Consult with the Federal Reserve Board, the Federal Trade Commission and the Department of Justice
Regulatory Flexibility Act Analysis/May Require Small Business Advocacy Review (SBREFA) Panels (comprehensive and lengthy process requiring coordination with SBA's Office of Advocacy and OIRA (OMB))	No provision
Statement of Basis and Purpose	No provision
Response to All Significant Comments	No provision
Right to Petition for Repeal of Rule	No provision
Financial Stability Oversight Council (FSOC) Review	No provision

* Informal APA Rulemakings under the Dodd-Frank Act may require additional process.

6/11/2015

New Hampshire Automobile Dealers Association, Inc.
Christopher J. Weiss, Chair · William H. Gurney, Vice Chair · Peter J. McNamara, President

June 9, 2015

The Honorable Frank Guinta
United States House of Representatives
326 Cannon House Office Building
Washington, DC 20515

Dear Representative Guinta:

On behalf of the 149 new car and truck dealers in New Hampshire, we are writing to express our strong support for H.R. 1737, the "Reforming CFPB Indirect Auto Financing Guidance Act." This bipartisan bill was introduced on April 8 by you and Rep. Ed Perlmutter (D-CO). H.R. 1737 would rescind the Consumer Financial Protection Bureau's (CFPB) flawed 2013 auto finance guidance and allow the CFPB to reissue it under an open and transparent process.

In addition to rescinding the 2013 guidance, H.R. 1737 would require that, prior to issuing any new guidance related to indirect auto financing, the CFPB:

- provide notice and a period for public comment;
- make public any studies, data, and analyses upon which the guidance is based;
- consult with the Federal Reserve Board, the Federal Trade Commission and the Department of Justice; and
- study the cost and impact of the guidance on consumers as well as women-owned, minority-owned, and small businesses.

By design, H.R. 1737 does not impinge on the CFPB's structure, jurisdiction, or authorities.

H.R. 1737 is needed to produce a more informed guidance compared to the 2013 guidance, which lacked public input, transparency, consultation with the CFPB's sister agencies and, by the CFPB's own admission, any study of the impact of the guidance on consumers. As a consequence of being issued without these essential safeguards, the CFPB's guidance could potentially (1) eliminate a dealer's ability to discount credit in the showroom; (2) raise credits costs; and (3) push marginally creditworthy consumers out of the auto credit market entirely.

Apart from the fact that guidance should not be used as a means to make sweeping policy and market changes, the CFPB auto guidance does not effectively manage fair credit risk in the showroom, which is its purported goal. The Department of Justice (DOJ), however, has created a better approach to address fair credit risk without decreasing competition and harming consumers. The DOJ model is being used as a template for a comprehensive compliance program that the National Automobile Dealers Association, National Association of Minority Automobile Dealers, and American International Automobile Dealers Association issued last year to their respective members. This optional compliance program addresses fair credit risk where it matters -- in the showroom -- while preserving a dealer's ability to discount credit.

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www.nhada.com

H.R. 1737 establishes an orderly, transparent process whereby the CFPB can identify the DOJ model as a viable means to address fair credit risk.

Since the 1920s, credit has been the lifeblood of America's auto industry. H.R. 1737 is a moderate, bipartisan process bill that does not direct a result or tie the CFPB's hands, but merely gives the public an opportunity to scrutinize and comment on the CFPB's attempt to change the auto loan market via "guidance." Without this legislation, dealer-assisted financing remains at risk, along with the threat that the CPFB's policy may eliminate our customers' ability to obtain lower interest rates at dealerships.

On behalf of all New Hampshire small business auto dealers, thank you for your leadership on this important small business and consumer issue.

Sincerely,

Dennis Gaudet	William Gurney
New Hampshire Director	Chairman
National Automobile Dealers Association	New Hampshire Automobile Dealers Association

NCSEA
National Child Support Enforcement Association

March 18, 2015

The Honorable Bruce Poliquin
U.S. Representative
426 Cannon House Office Building
Washington, DC 20515

Dear Representative Poliquin,

The National Child Support Enforcement Association (NCSEA) is pleased to support your bill, the *Child Support Assistance Act of 2015*. The measure would strike a provision of the Fair Credit Reporting Act (FCRA) which has enabled some parents who owe child support to make quick changes to their financial status in order to avoid paying the level of support they owe. In addition, it is impacting the ability for some states to utilize an automated service to identify employment of obligors faster than waiting for a W-4 match.

Under FCRA, credit reporting agencies must give consumers at least ten days' notice before they provide a credit report to a state or local child support agency. That ten day window provides some obligors with the opportunity to dump or hide savings and other assets, run up credit card debt and take other financial or employment actions to avoid or reduce support payments to their children. Your legislation would delete the ten day notification requirement, taking an option away from those parents who are trying to avoid supporting their children. Removing the ten day notice requirement will also provide more effectiveness and efficiencies for employers, child support agencies and, most importantly, will get money to families faster.

As your bill moves through the legislative process, we stand ready to work with you to ensure its enactment into law, including providing additional comments from our members if questions arise about the effect of the bill's language and impact.

Thank you for your leadership on this issue. If you have any questions, please contact me or Tom Joseph, NCSEA Washington Representative at tj@wafed.com.

Sincerely,

Colleen Delaney Eubanks

Colleen Delaney Eubanks, CAE
Executive Director

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American Bankers Association
Building Success. Together.

James Ballentine
Executive Vice President
Congressional Relations
and Political Affairs
202-663-5359
jballent@aba.com

April 15, 2015

The Honorable Keith Rothfus
1205 Longworth House Office Building
Washington, D.C. 20510

Dear Congressman Rothfus:

I am writing on behalf of the members of the American Bankers Association to express our strong support for two pieces of legislation you have offered that are of great importance to significant sectors of the banking industry. These measures will provide greater flexibility to many of America's hometown banks and the communities they serve.

The first bill, ***H.R. 1660, the Federal Savings Association Charter Flexibility Act***, sponsored along with Representative Jim Himes (D-CT), would implement a proposal offered by the Comptroller of the Currency (OCC) to provide greater flexibility to both mutual and stock thrift institutions chartered under the Home Owners Loan Act (HOLA).

The proposal adds a new section to HOLA that would give federal savings associations the flexibility to exercise national bank powers without changing their charters. Because the OCC already supervises both charters, it has the experience and the expertise necessary to ensure that a federal savings association exercising this flexibility operates safely and soundly.

Increasingly, taxpaying federal savings associations seeking to engage in additional activities to serve their communities are unable to do so because they are constrained by the current limits in HOLA. Under existing law, a federal savings association must convert to a bank charter to implement a strategic decision to engage in commercial or consumer lending to a greater extent than is permitted by HOLA. However, particularly for smaller institutions, charter conversions can be time-consuming and burdensome. Federal mutual savings associations face especially hard choices since they must convert to the stock form of organization before they can convert their charter. H.R. 1660 would provide a more efficient and less expensive way for these institutions to adapt and change to meet the needs of their customers and communities.

Your second bill, ***H.R. 1661, the Mutual Bank Capital Opportunity Act***, sponsored with Reps. Andy Barr (R-KY) and Steve Stivers (R-OH), is an equally important proposal that would provide taxpaying mutual institutions with a new investment tool to raise tier one capital. Such a tool is essential for mutual institutions, which have no shareholders and are limited to retained earnings to increase capital levels – a slow process that requires long-term planning. Boosting earnings is challenging in most times, but especially so in the current environment with increased expenses resulting from the Dodd-Frank Act. The Mutual Capital Certificate will assist with capital raising efforts, as mutuals grow to meet the needs of their communities.

The Mutual Capital Certificate, by statute, will qualify as Tier One common equity capital. This will allow taxpaying mutuals to raise targeted amounts of capital without sacrificing their mutual charter while satisfying regulatory and growth needs.

Mutual banks have a long history of serving their communities and promoting local growth, and the mutual charter is one of the oldest in the nation. There are over 580 mutually chartered institutions with $253 billion in assets across the country, ranging in size from well under $100 million to over $1 billion. H.R. 1661 does not just help these institutions grow capital, it helps their communities grow and thrive as well.

On behalf of the members of the American Bankers Association we thank you for your leadership in introducing these important bills, and we urge the Committee on Financial Services to consider them favorably at the earliest opportunity.

Sincerely,

James C. Ballentine

James C. Ballentine

cc: Members of the U.S. House of Representatives

ENTERPRISE BANK

June 10, 2015

Congressman Keith Rothfus
1205 Longworth HOB
Washington, D.C

Dear Congressman Rothfus,

Enterprise Bank ("the Bank") would like to provide our support for the proposed legislation H.R. 1941, the Financial Institutions Examination Fairness and Reform Act. The Bank firmly believes that legislation focused on regulatory relief and fair practices needs to be a top priority. We have long struggled with increased compliance costs and the inability to keep up with the ever changing and inconsistent results from our regulatory exams. More specifically, our experiences include examiners with an apparent disregard for following Generally Accepted Accounting Principals ("GAAP") and the law.

The Bank is a strong proponent of legislation which mandates timeliness of examination reports. We have waited months to receive our final reports while consistently meeting all of the timelines for information the examiners requested. We have also requested the factual information, GAAP criteria and law relied upon in the exam to help us understand the conclusions that were drawn. We were told the "exam speaks for itself". The Bank is also in favor of holding the regulators accountable to follow GAAP. GAAP has rules on revenue recognition which should be followed to accurately report the financial results of the banks operations. For example, placing a loan on non-accrual solely based on deterioration in value of collateral clearly violates GAAP. It is not hard to recognize that a loan inappropriately placed into a non-revenue recognition status is unfairly detrimental to a bank and the borrower.

Regulators say they address this concern by issuing guidance that states a loan can continue to be classified as an earning asset even if payments are delinquent, if the loan is <u>both</u> well secured and in the process of collection. This rule on its face seems reasonable; until the OCC subsequently interpreted the phrase "in the process of collection" to mean <u>the bank must collect the entire balance within the next thirty days</u>. It is impossible in today's legal environment for a bank to be able to meet this test at the onset of the collection process. Thus, the relief is practically unavailable. This interpretation does not promote the accurate reporting of earnings when there is collateral sufficient to repay the loan in full. In fact, it distorts earnings. The real world result of the examiner's interpretation is to steer banks away from new businesses or ones experiencing distress even if there is sufficient collateral present to repay the loan. We strongly support identical definitions and reporting requirements for non accrual loans across all regulatory agencies which are developed with accuracy in mind.

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Congressman Keith Rothfus
June 10, 2015
Page 2

Our Constitution provides a system of checks and balances. In simplistic terms, the Legislative Branch creates the laws, the Executive Branch enforces the laws and the Judicial Branch interprets the laws. All of us including Regulatory agencies are required to respect these checks and balances. Too often, however, they do not. Judicial Branch interpretations of the law are not always being respected. This is a very harsh criticism which we do not make lightly.

Case in point. A customer of the Bank lived on and operated a horse farm and operated a printing business. The assets of both served as collateral for the Bank's loan and were sufficient in value to pay back the loan in full. The printing business ceased operations and the Bank was forced to begin the collection process. The Bank successfully foreclosed upon the collateral and became the owner of the farm. The Bank sold off the mineral rights to the farm, entering into a gas lease with a large regional gas company. The lease provided for an initial upfront payment and the right to receive a percentage of the future gas sales revenue, if drilling occurred. The proceeds of the initial upfront payment paid back most of the debt owed to the Bank. The Bank then sold the farm back to the borrowers, financed by a smaller loan with lower payments, which the owners could afford. The Bank also agreed to return the gas rights to the borrower once the Bank was made whole from future revenues. These gas rights are in the Marcellus field and have real value. These rights could have provided a huge financial windfall to the Bank, but it chose to forego this to assist an aging couple who were experiencing hardship.

The FDIC local examiners "decided" that the Bank didn't really sell an asset when it sold the mineral rights via the lease, but rather it entered into the prohibited "business of gas exploration and development". They required that the Bank retroactively request permission in writing from the FDIC to enter into the lease. The Bank promptly did so.

The FDIC, for reasons which are not at all clear, simply refuses to act on the request it demanded the Bank submit. The request has gone unanswered for more than one year. At the same time, the FDIC is threatening the Bank that it is in violation of the law. They "suggest" we sell the lease to a third party and thereby repay the loan. While this would work for the Bank, it would severely disadvantage the retired borrowers as they would lose a material future income stream. This action would also force the Bank to go back on its word to these customers.

This is not just a matter upon which the Bank and the FDIC could reasonably disagree. The FDIC says we have entered into a lease and are in the gas development business. But the case law in this jurisdiction is absolutely clear and it concludes "using the term "lease" with regard to the conveyance of mineral rights is in some respects a misnomer because what is really involved is a transfer of an interest in real estate...". This judicial opinion directly conflicts with the FDIC position forcing the bank to request permission. No one argues that banks need permission to dispose of foreclosed real estate. This judicial holding is well reasoned and directly on point.

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June 10, 2015
Page 3

The FDIC's position appears to be it doesn't care what the Judicial Branch states. Its position is its position. Although the Bank has the right to do what it has done, it remains under a cloud. Under existing rules, until the FDIC acts upon our request, which they demanded we make, the Bank is in "no man's land." The Bank cannot get this issue before the court. There is no practical method to force the FDIC to act. Clearly a timely independent review process is required.

With that being said the Bank clearly supports all of the proposed sections of the legislation but would like to recommend one enhancement. We believe that it is vital that the legislation includes an "Independent Examination Review Panel" with the operative word being "independent". Independence can be viewed a multitude of ways. Independent is defined as "not influenced or controlled by others in matters of opinion, conduct, etc.; thinking or acting for oneself" [1]. Currently, if you have a difference of opinion about the results of the regulatory exam you appeal to a person in the same agency. It is hard to convince us that the current process is unbiased. To illustrate this point in a common situation, if you receive a traffic ticket and want to appeal the decision and your only option is to appeal to the Chief of Police; do you believe you will obtain an unbiased decision? The truth is, if you are a regulator, a banker, or a police officer, you are going to have a partial view tainted toward your background

Our recommendation would be to include a panel of three judges all with different expertise. One judge will be appointed by the FFIEC to provide regulatory expertise, one by the SEC who has in depth knowledge of GAAP and will focus on accuracy of reporting and one with private sector senior management experience in the industry. The well diversified team of experts as a group can give a well balanced, unbiased decision. We propose establishing a review and appeal process that implements a truly independent and timely process to assure accurate, fair and balanced legal regulatory interpretations of our existing laws, regulations and rules.

In summary, banks need these changes if they are to provide the capital that our small businesses now so desperately need.

Sincerely,

Charles H. Leyh
President & Chief Executive Officer

1 - http://dictionary.reference.com/browse/independent

INDEPENDENT COMMUNITY
BANKERS *of* AMERICA®

April 27, 2015

The Honorable Keith Rothfus
U.S. House of Representatives
Washington, D. C. 20515

Dear Representative Rothfus:

On behalf of the more than 6,000 community banks represented by ICBA, I write to express our support for the Federal Savings Association Charter Flexibility Act (H.R. 1660) which would create a new national charter option for federal savings associations.

Under H.R. 1660, a federal savings association, or thrift, could elect to be regulated as a Covered Savings Association (CSA) with authority to exercise the full range of national bank powers. H.R. 1660 would provide flexibility for institutions to choose the business model that best suits their needs and the communities they serve, without having to go through the process or incurring the legal expense of converting to a national bank charter.

H.R. 1660 does not address whether the holding company of a CSA would become subject to regulation and supervision under the Bank Holding Company Act of 1956 (BHCA) once the CSA exercises national bank powers. The legal status of CSA holding companies should be clarified since the requirements of the BHCA and the Savings and Loan Holding Company Act (SLHCA) differ. Of special concern are grandfathered unitary savings and loan holding companies (GUSLHCs)—non-bank and commercial firms—exempted from provisions of the SLHCA and BHCA by the Gramm-Leach-Bliley Act so long as their subsidiary thrifts exercise only thrift powers. These entities should not be granted full national bank powers without corresponding BHCA supervision and regulation. ICBA looks forward to working with you to clarify the status of CSA holding companies under the proposed legislation.

Thank you for introducing H.R. 1660. We look forward to working with you to advance this important legislation.

Sincerely,

/s/

Camden R. Fine
President & CEO

CC: Members of the House Financial Services Committee

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PACB
Pennsylvania Association of Community Bankers

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www.pacb.org

April 21, 2015

Honorable Keith Rothfus
United States Congress
1205 Longworth HOB
Washington, DC 20515

Dear Representative Rothfus,

The Pennsylvania Association of Community Bankers (PACB) would like to express our strong support for H.R. 1660, Federal Savings Association Charter Flexibility Act, and H.R. 1661, Mutual Bank Capital Opportunity Act. PACB is the only trade association that exclusively represents the interests of Pennsylvania's community banks.

PACB appreciates your leadership in sponsoring these two important pieces of legislation to keep local banks open, ensure consumer choice in the marketplace, and equip mutual institutions with tools to grow in a safe and sound process. Mutual institutions are unique in that they are owned entirely by their customers and are able to reinvest directly in their communities through their lending activity.

H.R. 1660 and H.R. 1661 would provide mutuals with flexibility to continue to serve the financial needs of their communities in a responsible manner.

We are supportive of efforts to strengthen mutual institutions and protect their viability for years to come and we look forward to working with you and your staff to advance this legislation.

Sincerely,

Nick DiFrancesco
President and CEO

CSBS SINCE 1902
CONFERENCE OF STATE BANK SUPERVISORS

June 10, 2015

The Honorable Roger Williams
U.S. House of Representatives
1323 Longworth House Office Building
Washington, DC 201515

Dear Congressman Williams:

On behalf of the Conference of State Bank Supervisors (CSBS),[1] I am writing to express CSBS's strong support for H.R. 2643, the State Licensing Efficiency Act of 2015. By ensuring that state regulators have the best tools possible for licensing and monitoring non-depository financial services providers, this bipartisan bill will increase efficiency and uniformity, reduce regulatory burden, and enhance consumer protection.

The states began developing the Nationwide Multistate Licensing System and Registry (NMLS or the System) in 2006 as a single system for the licensing and registration of non-bank financial services industries, with an initial focus on the nation's mortgage industry. NMLS allows the states to track mortgage loan originators (MLOs) from state-to-state on a nationwide basis while keeping licensing and oversight at the state level. NMLS also provides state regulators a secure and efficient means by which to conduct background checks on license applicants. Whereas a state wishing to conduct a criminal background check through traditional means may wait several weeks and sometimes even months for a response, NMLS communicates directly with the FBI and often receives the same results in just 24 hours.

Recognizing the value of a single, streamlined system, Congress codified into federal law NMLS in 2008 with the passage of the Secure and Fair Enforcement of Mortgage Licensing Act of 2008 (the SAFE Act), requiring all MLOs to register and be licensed with the System. The SAFE Act established a state-federal cooperative structure, where state regulators are given primary

[1] CSBS is the nationwide organization of banking regulators from all 50 states, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands. State banking regulators supervise nearly 5,000 state-chartered depository institutions, most of which are community banks. Additionally, most state banking departments regulate a variety of non-bank financial services providers, including mortgage lenders. For more than a century, CSBS has given state supervisors a national forum to coordinate supervision of their regulated entities and to develop regulatory policy.

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202-296-2840 • FAX 202-296-1928

responsibility for implementing the law's requirements and a federal agency serving as a backstop and arbiter of the SAFE Act.

Building on the success of NMLS, state regulators made the decision in 2010 to expand the System into licensing of state-supervised, non-bank financial services providers. Starting in April 2012, state regulators began voluntarily using NMLS on this expanded basis to include licensees such as check cashers, debt collectors, money transmitters, and pawnbrokers.

For the past decade, the states have worked together to streamline licensing requirements so financial services providers can serve the public and keep bad actors out of the financial services industry. One of the functions of licensing is to ensure the individuals providing financial services to consumers meet state law requirements related to character and fitness to engage in the conduct of certain financial businesses.

By enhancing the authority of NMLS to process criminal history records for the licensing of financial services providers beyond MLOs, H.R. 2643 ensures that state financial regulators have the necessary tools to exercise effective oversight. This clarification of authority creates no new background check requirement and will significantly reduce the wait time for license applicants, allowing financial service providers to focus their time and effort on better serving their communities.

CSBS applauds you and the original co-sponsors of H.R. 2643 for recognizing the value of state supervision and urges swift passage of this bill.

Thank you for your consideration,

John W. Ryan
President and CEO

cc:
Congressman Randy Neugebauer, Chairman, House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit
Congressman William Lacy Clay, Ranking Member, House Financial Services Committee
Subcommittee on Financial Institutions and Consumer Credit

Draft answer for Ollie Ireland

Question:

Currently, mortgage loan originators have their background checks processed by the NMLS and as a result, the turnaround time for the information is less than 24 hours. Meanwhile, the turnaround time for all other financial services providers who are required by state law to have a background check takes weeks to months. Please explain how and why there is a wide discrepancy in processing background checks for mortgage loan originators and other financial services providers? Is it time to modernize the process so that all financial services providers may have their background checks processed in the same manner and efficiency?

Answer:

State regulators developed the Nationwide Multistate Licensing System and Registry (NMLS) to be an electronic system for licensing as a streamlined process for financial services providers where information is shared seamlessly among state regulators. NMLS, administered by the states through CSBS, allows for state-licensed financial services providers to apply for, amend, update, or renew a license online for all participating state agencies using a single set of uniform applications.

In 2008, when the Secure and Fair Enforcement for Mortgage Licensing Act (SAFE Act) was enacted into law, residential mortgage loan originators were required to be either licensed or registered through the Nationwide Multistate Licensing System and Registry (NMLS) and have a criminal history records check with the FBI channeled through NMLS. While NMLS is used for a wide range of financial services licensed at the state level, only the mortgage loan originators benefit from the direct background checks provided in the SAFE Act.

All other state licensed financial service providers must use other methods to process background checks with the FBI that result in redundant FBI checks when an individual is licensed in more than one state.

In hindsight and given the NMLS' benefits for all state non-depository licensing regimes, it was unfortunate that state-licensed financial service providers were not included in the SAFE Act authority. State regulators have expanded their use of the NMLS as a licensing system for other state-licensed, non-bank financial services providers. As of today, 61 state agencies manage 540 state license types through the NMLS.

H.R. 2643 would amend the SAFE Act to allow state regulators to quickly and efficiently process background checks for state licensees in other financial services industries, when required under a state law. The change would expedite the application process for these state licenses, reducing the background check time by as much as three weeks to the benefit of state regulators, the industries that may regulate and ultimately the public.